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SUPREME COURT U. S.
FILED
JAMES H. McKENNEY, CLERK

U. S. Supreme Court.

HENRY G. FISK ET AL.,
Plaintiffs in Error,

vs.

CHESTER A. ARTHUR,
Defendant in Error.

Oct. T., 1880—*No.* 260.

BRIEF FOR PLAINTIFFS IN ERROR.

STATEMENT.

The plaintiffs, in 1873, made several importations of shirtings, composed of linen and cotton, upon which the defendant, as Collector of Customs, assessed, and plaintiffs paid, a duty of ninety per cent. of the sum of five and a half cents per square yard and twenty per cent. *ad valorem*, which duty amounted to more than thirty-five per cent. *ad valorem*, and against the payment of which duty the plaintiffs duly protested against said exactions on Madras and Cheviot shirtings, composed of mixed materials, cotton and flax, upon the ground that the merchandise was only liable, under existing laws, to a duty of thirty-five per centum *ad valorem*, less ten per centum, under section 22 of the Act of March 2, 1861, and section

13 of the Act of July 14, 1862, and section 2 of the Act of July 6, 1872.

The testimony further showed that the goods in question were made of linen and cotton, and had been imported for several years; that they were shirtings not made up; that the cotton was largely the material of chief value.

It was conceded by counsel for plaintiffs that the goods exceeded two hundred threads to the square inch.

Record, p. 8.

The statutes are as follows:

The duty was assessed under the Act of March 3, 1865.

On all manufactures of cotton (except jeans, denims, drillings, bed-tickings, ginghams, plaids, cottonades, pantaloon stuff and goods of like description) not bleached, colored, stained, painted or printed, and not exceeding one hundred threads to the square inch, counting the warp and filling, and exceeding in weight five ounces per square yard, five cents per square yard * * * On goods of like description exceeding two hundred threads to the square inch, counting the warp and filling, unbleached, five cents per square yard; if bleached, five and one-half cents per square yard; if colored, stained, painted or printed, five and a half cents per square yard, and, in addition thereto, twenty per centum *ad valorem*.

Act of March 3, 1865, sec. 1, 13 Stat. at Large, 491–2.

The plaintiffs claimed that, being composed of cotton and flax, they were only dutiable at thirty-five per cent. under the Acts of 1861, 1862, viz.:

"Manufactures, not otherwise provided for, composed of mixed materials, in part of cotton, silk, wool, or worsted, or flax;" thirty per cent.

Act of March 2, 1861, sec. 22, 12 Stat. at Large, 192.

"Manufactures not otherwise provided for, composed of mixed materials, in part of cotton, silk, wool, or worsted, hemp, jute, or flax; five per cent. additional."

Act of July 14. 1862, sec. 13, 12 Stat. at Large, 557.

Errors Assigned.

The court erred in refusing to direct a verdict for the plaintiffs.

The court erred in directing a verdict for the defendant.

POINTS.

The case of Solomon *vs.* Arthur, at the present term of this court, has settled that the provision for goods of mixed materials is merely descriptive.

Upon the same reasoning, the provisions of the Act of 1865, under which it is claimed these goods fall is also merely descriptive.

The question then is which of the two provisons answers to the description of the goods.

Are they manufactures of cotton, or are they manufactures of mixed materials, in part of cotton, flax, &c.?

The record shows them to have been composed of the two materials.

Whether the one or the other predominated in value is, we submit, a circumstance of no materiality as between these two provisions.

The record finds them to be manufactures of cotton and flax, by which descriptive enumeration the revenue statutes impose a duty. By what process of reasoning they at the same time come within the other descriptive enumeration of "manufactures of cotton," is not apparent.

It is also to be observed that the act of 1861, § 14, contained similar provisions for manufactures of cotton to the Act of 1865.

See Act of March 2, 1861, sec. 14, 12 Stat. at Large, 185.

It is then submitted that the goods in question, being manufactures of cotton and linen, were not manufactures of cotton, and were not dutiable under the Act of 1865, but remained dutiable under the provisions for manufactures of mixed materials in the Acts of 1861 and 1862, in which acts they are specifically described.

STEPHEN G. CLARKE,
Of Counsel for Plaintiffs in Error.

In the Supreme Court of the United States.

OCTOBER TERM, 1880.

FISK & OTHERS, PLAINTIFFS IN ERROR,
vs.
THE UNITED STATES. } No. 260.

BRIEF FOR THE UNITED STATES.

The facts of the case, as well as the statutes upon which the question here directly turns, are given in the brief for the plaintiff in error.

For the United States the contention is that the special provisions in the acts of 1861 and 1862, relied upon by the plaintiffs in their protest (record, folio 22) and brief, have been *dropped*, *i. e.*, in effect repealed, in the act of 1864, ch. 171, sec. 6. This latter act, after making a provision for *countable* cotton goods, like the one quoted in the plaintiff's brief and usual in recent customs-duties acts, added a provision for "other manufactures of cotton not otherwise provided for," not contained in the acts of 1861 and 1862, and *omitted* the provision for manufactures of *mixed materials* quoted by the plaintiffs.

The effect of this is, either that the provision as to *countable* "manufactures of cotton" in the act of 1865 is

to be assumed to apply to all manufactures in which cotton is the principal material, or that the general provision for articles made of mixed materials contained in the act of 1842, c. 270, sec. 20 (5 Stat., 505), which is preserved in section 2499 of the Revised Statutes, operates upon the importations in question. This last is the well known provision that "on all articles manufactured from two or more materials the duty shall be assessed at the highest rates at which any of its component parts may be chargeable."

The result as to the rate of duty is, of course, the same in both cases.

S. F. PHILLIPS,
Solicitor-General.

~~1800~~
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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~818.~~ 227

THE NEW-YORK LIFE INSURANCE COMPANY, PLAINTIFF IN ERROR,

vs.

EDSON C. BANGS, DEFENDANT IN ERROR.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF MINNESOTA.

FILED OCTOBER 7, 1878.

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COPY OF JUDGMENT ROLL,

REFERRED TO IN FOREGOING TESTIMONY AS "EXHIBIT A."

To the Honorable the District Court in and for the County of Ramsey and State of Minnesota, and to the Judges thereof:

Your petitioner respectfully states and shows to this Court, that he is a minor under the age of twenty-one years, and a resident of Faribault, in the County of Rice and State of Minnesota. That, as he is informed and verily believes, he has a good cause of action at law against the New-York
573 Life Insurance Company, a corporation created under the laws of the State of New-York, and doing business as an insurance company in the State of Minnesota and elsewhere.

That he is desirous of having some proper and suitable person appointed as guardian, to appear for him and conduct said suit; that your petitioner desires to commence said action in the District Court in and for the County of Ramsey; that Cushman K. Davis of St. Paul, Ramsey County, Minnesota, would be a suitable and proper person to act for and appear as guardian for your petitioner in said action.

Wherefore your petitioner prays that said Cushman K. Davis of said County of Ramsey, be duly appointed as such guardian by this Court, according to the statutes in such case made and provided.

Dated at Saint Paul, Minnesota, this 19th day of June, 1876.

EDSON C. BANGS.

By DAVIS, O'BRIEN & WILSON,
His Attorneys.

I, Cushman K. Davis, of Ramsey County, Minnesota, hereby consented to act as guardian *ad litem* for the above named Edson C. Bangs, a minor, in the matter set forth in the foregoing petition.

Dated St. Paul, Minnesota, June 19th, 1876.

CUSHMAN K. DAVIS.

And now, on reading the foregoing petition of Edson C. Bangs, a
574 minor, asking that Cushman K. Davis of St. Paul, be appointed by this Court as his guardian, for certain purposes therein named, and it appearing that said Cushman K. Davis has and does consent to act as such guardian, and on motion of Messrs. Davis, O'Brien & Wilson, attorneys for said petitioner, Edson C. Bangs, ordered that Cushman K. Davis be and he is hereby appointed as guardian *ad litem* for the purposes mentioned in the foregoing petition.

Dated June 19th, 1876.

H. R. BRILL,
Judge District Court, Second Judicial District.

Endorsed; filed June 21st, 1876.

A. ARMSTRONG,
Clerk.

JAS. O'BRIEN,
Deputy.

DISTRICT COURT, SECOND JUDICIAL DISTRICT.

STATE OF MINNESOTA,
County of Ramsey:

EDSON C. BANGS, by his Guardian *ad litem*, CUSHMAN K. DAVIS,
vs.
THE NEW-YORK LIFE INSURANCE COMPANY.

The State of Minnesota to the above named defendant:

You are hereby summoned and required to answer the complaint of the plaintiff in the above entitled action, of which a copy is hereunto annexed and herewith served upon you, and to serve a copy of your answer to said
575 complaint on the subscribers at the office of Davis, O'Brien & Wilson, in the City of St. Paul, in said County, within twenty days after the service of this summons upon you, exclusive of the day of such service, and if you fail to answer the said complaint within the time aforesaid, the plaintiff in this action will take judgment against you for the sum of ten thousand dollars with interest at the rate of seven per cent. per annum, from the 21st day of April, 1876, together with the costs and disbursements of this action.

Dated , Minnesota, 187 .

DAVIS, O'BRIEN & WILSON,
Plaintiff's Attorneys,
St. Paul, Minnesota.

STATE OF MINNESOTA,
County of Ramsey, ss:

Henry A. Wilson, being duly sworn, deposes and says, that on the 23d day of June, A. D. 1876, at the City of St. Paul, in said County, he served the within summons and complaint upon the within defendant personally, by delivering to and leaving with I. F. A. Studdart, the author-
576 ized attorney of said company, a correct copy of each thereof.

H. A. WILSON.

Subscribed and sworn to before me, this 23d day of June, A. D. 1876.

[SEAL] C. D. O'BRIEN,
Notary Public.

DISTRICT COURT, SECOND JUDICIAL DISTRICT.

STATE OF MINNESOTA,
County of Ramsey:

EDSON C. BANGS, by his Guardian *ad litem*, CUSHMAN K. DAVIS,
Plaintiff,
vs.
THE NEW-YORK LIFE INSURANCE COMPANY.

And now comes Edson C. Bangs by Cushman K. Davis, his guardian, duly appointed by said Court and for cause of action against the defendant, alleges:

First. That he is of the age of fifteen years, and a resident of Faribault in the County of Rice in said State; that the defendant was at all the times hereinafter mentioned and is now a corporation created by the laws of the State of New-York and lawfully transacting the business of life insurance in the State of Minnesota and elsewhere. That on the 22d day of November, A. D. 1875, for valuable and sufficient consideration among which was the sum and premium of one hundred and two $\frac{90}{100}$ dollars paid to it by James H.
577 Bangs the defendant, duly made, executed and delivered to James H. Bangs its certain policy of insurance in writing, a copy of which is hereto annexed and marked "Exhibit A," and thereby insured the life of James H. Bangs, who was the father of the plaintiff, in the amount of five thousand dollars for the term of his natural life commencing on the 22d day of November, A. D. 1875, at noon and thereby promised and agreed to pay the amount of the said insurance to the plaintiff in sixty days after due notice and satisfactory proof of the death of the said James H. Bangs, during the continuance of the policy. That on the 5th day of December, 1875, and during the continuance of the said policy, the said James H. Bangs died and that his death was not caused by any violation of any clause of the policy, nor by any of the excepted causes therein mentioned.

That on or about the 18th day of February, A. D. 1876, due notice and satisfactory proof of the death of the said James H. Bangs was given
578 to the said defendant.

That the said James H. Bangs duly performed all and singular the acts required by the said policy by him to be done in the premises and that this plaintiff has duly performed and fulfilled all and singular required to be done by him in the premises. That no part of the said five thousand dollars has ever been paid.

Second. And for a further cause of action the plaintiff alleges that he is of the age of fifteen years, and a resident of Faribault, County of Rice, State of Minnesota; that the defendant was at all the times hereinafter mentioned, and is now a corporation created by the laws of the State of New-York, and lawfully transacting the business of life insurance in the State of Minnesota and elsewhere. That on the 22d day of November, A. D. 1875, for a valuable and sufficient consideration, to wit: for the sum and premium of one hundred and two $\frac{90}{100}$ dollars paid to it by James H. Bangs, the defendant duly made, executed and delivered to said James H. Bangs, its certain other policy
579 of insurance in writing, a copy of which is hereto annexed and marked "Exhibit B," and thereby insured the life of James H. Bangs, who was the father of this plaintiff, in the additional sum of five thousand dollars for the term of his natural life, commencing on the 22d day of November, A. D. 1875, at noon, and thereby promised and agreed to pay the amount of the said insurance to this plaintiff in sixty days after due notice and satisfactory proof of the death of the said James H. Bangs during the continuance of the said policy. That on the 5th day of December, 1875, and during the continuance of the said policy, the said James H. Bangs died, and that his death was not caused by any violation of any clause of the said policy, nor by any of the excepted causes therein mentioned; that on or about the 18th day of February, A. D. 1876, due notice and satisfactory proof of the death of the said James H. Bangs was given to the said defendant.

That the said James H. Bangs duly performed all and singular the acts required by him to be done in the premises, and that this plaintiff has
580 duly performed all and singular the acts required to be done by him in the premises.

That no part of the said five thousand dollars has ever been paid, though often requested. Wherefore he demands judgment against the said defendant

for the sum of ten thousand dollars, with interest, from April 21st, 1876, and for costs.

DAVIS, O'BRIEN & WILSON,
Plaintiffs' Attorneys,
St. Paul, Minnesota.

GEO. N. BAXTER,
of Counsel.

Exhibit A.

[Annual Premium, $205.80. Payable $102.90, November 22, May 22.]

[Tontine Investment Policy Number 116,631. Amount $5,000.]

The New-York Life Insurance Company, by this policy of insurance in consideration of the statements and representations submitted to its officers at the home office in the City of New-York and contained in the written application for this policy and in the declaration thereto subjoined (all of which statements and representations have been and are hereby warranted by the applicant to be true and are by the parties hereto referred to and made a part of this contract) upon the faith of which statements
581 and representations this policy is issued, and of the sum of one hundred and two dollars and ninety cents to them in hand paid and of the annual premium of two hundred and five dollars and eighty cents to be paid in like manner and sums as per margin in every year during the continuance of this policy, doth insure the life of James H. Bangs, manufacturer (hereinafter called the insured), of Pontiac, in the County of Oakland, State of Michigan, in the amount of five thousand dollars for the term of his natural life, commencing on the twenty-second day of November, 1875, at noon. And the said company doth hereby promise and agree to pay the amount of said insurance at its office, in the City of New-York to the assured under this policy, to wit: Edson C. Bangs, son of said James H. Bangs or his legal representatives in sixty days after due notice and satisfactory proof of the death, during the continuance of this policy, of the said person
582 whose life is hereby insured as above, deducting therefrom all indebtedness to the company, together with any balance of the year's premium remaining unpaid.

This policy is issued and accepted by the assured upon the following express conditions and agreements:

1st. If the person whose life is hereby insured shall travel or reside beyond the settled limits or the protection of the Government of the United States (excepting in the settled limits of the Dominion of Canada, Prince Edwards Island, or Newfoundland), or between the first of July and the first of November south of a line beginning at a point of intersection of the northerly boundary of North Carolina with the Atlantic coast; thence running westerly along the said northerly boundary to a point one hundred miles from the coast; thence in a south-westerly direction continuing one hundred miles from said coast to the thirty-fourth parallel of latitude;
583 thence westerly along said parallel to the westerly border of Alabama (excepting the City of Atlanta and an area within a radius of fifty

miles around it); thence northerly along the westerly border of Alabama and along the Tennessee River to the northerly boundary of Tennessee; thence westerly along the northerly boundary of Tennessee and Arkansas, extended to the ninety-seventh degree of west longitude; thence southerly to the thirty-second parallel of north latitude; thence westerly along the said parallel to the Pacific Ocean; or shall enter upon a voyage upon the high seas (excepting as hereinafter specified), or shall be personally engaged in blasting, mining, submarine operations, or the production of highly inflammable or explosive substances; or in working or managing a steam engine in any capacity; or as a marine, engineer, fireman, conductor, express messenger, or laborer in any capacity; upon service on any sea, sound, inlet, river, lake, or railroad; or shall enter any military or naval service whatsoever (the militia when not in actual service excepted) without the consent of this company in each or either of the foregoing cases previously given in writing; or if he shall die in or in consequence of a duel or of the violation of the laws of any nation, state, or province; or if his death shall be caused by intoxicating drinks or opium; or if any of the statements or representations hereinabove in the first paragraph of this policy referred to shall be found in any respect untrue, then and in every such case this policy shall be null and void.

2d. If the premiums as above stipulated shall not be paid on or before the days above mentioned for the payment thereof (allowances being made for the month of grace hereinafter mentioned) at the office of this company, in the City of New-York (unless otherwise expressly agreed in writing), or to agents when they produce receipts signed by the President, Vice-President, or Actuary, then and in every such case this company shall not be liable for the payment of the sum assured or any part thereof, and this policy shall cease and determine. While the said company or its agents may at their option give notice of the time of payment of said premiums, the giving of such notice shall be deemed an act of courtesy only, and shall not be deemed to establish a custom in relation thereto, or to be obligatory upon said company or its agents.

3d. In every case where this policy shall cease and determine, or become or be null and void, all payments thereon shall be forfeited to this company, and no action or right of action shall remain to or be maintained against this company by the assured or by any other person by virtue of this policy or of anything connected therewith.

4th. Receipts for premiums are not valid unless signed by the President, Vice-President or Actuary.

5th. Agents for the company are not authorized to make, alter or discharge contracts, or waive forfeitures.

6th. Inasmuch as only the officers at the home office of the company in the City of New-York have authority to determine whether or not a policy shall issue on any application, and as they act on the written statements and representations herein above referred to, it is expressly understood and agreed that no statements, representations, or information, made or given by or to the person soliciting or taking the application for this policy, or to any other person, shall be binding on the company, or in any manner affect its rights, unless such statements, representations, or information be reduced to writing and presented to the officers of the company at the home office, in the application referred to.

7th. The person whose life is hereby insured has permission to pass as passenger by direct route in first-class vessels as follows: 1st. To and from Europe (travel and residence wherein is hereby permitted). 2nd. To and from California, and along the coast of Nova Scotia, New Brunswick, and the United States between Cape Cansa, and the Rio Grande (provided no port is

entered in which residence at the time of such entrance is prohibited). 3d. Between ports on the East Pacific coast north of 32 deg. of north latitude. 4th. Between ports of the East Pacific coast north of 32 deg. of north latitude and ports in the Sandwich Islands, China and Japan. And further, this policy is issued and accepted by the assured on the following special agreements and conditions relative to policies on the tontine investment policy plan :

1st. That this policy is issued on the Tontine Investment Policy plan.

2d. That the Tontine dividend period for this policy shall be completed on the 22d day of November, in the year eighteen hundred and eighty-
587 five.

3d. That no dividend shall be allowed or paid this policy unless the person whose life is hereby insured shall survive until the completion of its Tontine dividend period, and unless this policy shall then be in force.

4th. That all surplus or profits earned from such policies on the Tontine Investment Policy plan as shall cease to be in force before the completion of their respective Tontine dividend periods, shall be apportioned equitably among such policies of the same class as shall complete their Tontine dividend periods in the same year.

That after the completion of the Tontine dividend period, on the twenty-second day of November, 1885, provided this policy shall not have been previously terminated by lapse or death, the accumulations apportioned to this policy shall secure to the assured one of the following benefits :

First. To apply the accumulated dividends to the purchase of an annuity during the life of the insured, to be applied to the reduction of subsequent premiums on this policy, and in case the amount accruing in any year
588 from the annuity, together with dividends that may thereafter be declared on this policy shall exceed the amount of premiums due thereon the excess shall be paid in cash to said insured or assigns.

Second. To continue the assurance for the original amount and withdraw the accumulated dividend upon this policy in cash, payable to said insured or assigns.

Third. To withdraw the entire equity (*i. e.* the accumulations that belong to this policy) in cash.

Fourth. To convert the entire equity into its equivalent in a paid-up policy without participation in profits, provided that should the amount of the paid-up policy exceed the original amount of the insurance, as a condition precedent to its issue a satisfactory certificate of good health from an examiner of the company and subject to its approval shall be furnished, and provided that this policy is duly surrendered within ninety days from the termination of the Tontine Dividend Period.

Fifth. The conversion of the entire equity into an annuity to continue during the life of said insured. These benefits are at the option of the assured, but it is understood and agreed that not less than three months prior to the termination of the Tontine Period the assured shall notify the company in writing which benefit is selected, and if no such notification is received then and in that case the accumulated profits shall be converted into an
589 annuity to be applied to the redemption of such remaining premiums under the conditions stipulated in the "first benefit" named above.

Sixth. That in the payment of premiums upon this policy a grace shall be allowed of one month; provided, that in all cases when this grace is availed of a fine at the rate of ten per cent. per annum, shall be paid to the company for the time deferred. An assignment of this policy to be valid must be made in duplicate, both must be sent to this company for acknowledgment and due proof of interest produced with the proofs of death.

In witness whereof the said New-York Life Insurance Company has by its

President and Actuary signed and delivered this contract this twenty-second day of November, one thousand eight hundred and seventy five.

MORRIS FRANKLIN,
President.

WM. H. BEERS,
Vice-President and Actuary.

Exhibit B.

[No. 116,732; amount, $5,000; annual premium, $205.80; payable $102.90, Nov. 22, May 22.]

The New-York Life Insurance Company by this policy of insurance, in consideration of the statements and representations submitted to its officers at the home office, in the City of New-York, and contained in the written application for this policy, and in the declaration thereto subjoined (all of
590 which statements and representations have been and are hereby warranted by the applicant to be true, and are by the parties hereto referred to and made a part of this contract), upon the faith of which statements and representations this policy is issued, and of the sum of one hundred and two dollars and ninety cents, to them in hand paid, and of the annual premium of two hundred and five dollars and eighty cents, to be paid in like manner and sums, as per margin, in every year during the continuance of this policy, doth insure the life of James H. Bangs, merchant miller, of Pontiac, in the County of Oakland, State of Michigan, in the amount of five thousand dollars, for the term of his natural life, commencing on the twenty-second day of November, 1875, at noon; and the said company doth hereby promise and agree to pay the amount of the said insurance at its office, in the City of New-York, to the assured under this policy, to wit: Edson C. Bangs, son of the said James H. Bangs, or his legal representatives, in sixty days after due notice and satisfactory proof of the death during the continuance of this
591 policy of the said person whose life is hereby insured as above, deducting therefrom all indebtedness to the company, together with any balance of the year's premium remaining unpaid. This policy is issued and accepted by the assured upon the following express conditions and agreements:

1st. If the person whose life is hereby insured shall travel or reside beyond the settled limits or the protection of the Government of the United States (excepting in the settled limits of the Dominion of Canada, Prince Edwards Island, or Newfoundland), or between the first of July and the first of November south of a line beginning at the point of intersection of the northerthly boundary of North Carolina with the Atlantic coast; thence running westerly along the said northerly boundary to a point one hundred miles from the coast; thence in a south-westerly direction continuing one hundred miles from said coast to the thirty-fourth parallel of latitude, thence westerly along said parallel to the westerly border of Alabama, excepting the City of Atlanta and an area within a radius of fifty miles around it; thence westerly along the westerly border of Alabama and along the Tennessee River to the
592 northerly boundary of Tennessee, thence westerly along the northerly boundary of Tennessee and Arkansas extended to the ninety-seventh

degree of west longitude, thence southerly to the thirty-second parallel of north latitude; thence westerly along the said parallel to the Pacific Ocean, or shall enter upon a voyage upon the high seas (except as hereinafter specified), or shall be personally engaged in blasting, mining, submarine operations or the production of highly inflammable or explosive substances, or in working or managing a steam engine in any capacity, or as mariner, engineer, fireman, conductor, express messenger or laborer in any capacity upon service on any sea, sound, inlet, river, lake or railroad, or shall enter any military or naval service whatsoever (the militia when not in actual service excepted), without the consent of this company in each or either of the foregoing cases previously given in writing; or if he shall die in or in consequence of a duel, or of the violation of the laws of any nation, state or province; or if his death shall be caused by the use of intoxicating drinks or opium, or if any of the statements
593 or representations herein above in the first paragraph of this policy referred to shall be found in any respect untrue, then and in every such case this policy shall be null and void.

2d. If the premiums as above stipulated shall not be paid on or before the days above mentioned for the payment thereof at the office of this company in the City of New-York (unless otherwise expressly agreed in writing), or to agents when they produce receipts signed by the President, Vice-President or Actuary, then and in every such case this company shall not be liable for the payment of the sum assessed or any part thereof, and this policy shall cease and determine (claim for paid-up policy as hereinafter provided for excepted), and the acceptance in any case by the company of a premium on a day subsequent to the day whenever the same is payable as above provided, shall be deemed an act of courtesy only, and shall not be deemed a waiver of the foregoing conditions as to payment of premiums accruing thereafter, or as establishing any use or custom in conflict therewith, while the said company or its agents may at their option give notice of the time of payment of
594 said premiums, the giving of such notice shall be deemed an act of courtesy only, and shall not be deemed to establish a custom in relation thereto, or be obligatory upon said company or its agents.

3d. In every case where this policy shall cease and determine, or become or be null and void, all payments shall be forfeited to this company, and no action or right of action shall remain to or be maintained against this company by the assured or by any other person by virtue of this policy, or of anything connected therewith.

4th. Receipts for premiums are not valid unless signed by the President, Vice-President or Actuary.

5th. Agents of the company are not authorized to make, alter or discharge contracts, or waive forfeiture.

6th. Inasmuch as only the officers at the home office of the company in the City of New-York have authority to determine whether or not a policy shall issue on any application, and as they act on the written statements and representations herein above referred to, it is expressly understood and agreed, that no statements, representations, or information made or given by
595 or to the person soliciting or taking the application for this policy, or to any other person shall be binding on the company, or in any manner affect its rights, unless such statements, representations or information be reduced to writing, and presented to the officers of the company at the home office, in the application referred to.

7th. The person whose life is hereby insured has permission to pass as passenger by direct route in first-class vessels, as follows: 1st. To and from Europe (travel and residence wherein is hereby permitted.) 2d. To and from California and along the coasts of Nova Scotia, New Brunswick, and the United States between Cape Cansa and the Rio Grande (provided that no port

is entered in which residence at the time of such contract is prohibited). 3d. Between ports on the East Pacific coast north of 32 degrees of north latitude. 4th. Between ports on the East Pacific coast north of 32 degrees of north latitude, and ports in the Sandwich Islands, China and Japan. If, after premiums upon this policy for not less than three complete years shall have been duly received by the company, this policy shall cease and determine
596 in consequence of default in payment of a subsequent premium, the company will, on due surrender of this policy and the dividends thereon, issue in lieu thereof (provided such surrender is made within three months of the date of such default) a paid-up policy (payable as above) for an equitable amount to be determined by the company, but which, in case the age of the person whose life is hereby insured is now under forty-five years, and shall be, at the date of such surrender, under sixty-five years, shall not be less than the net sum of the ordinary premiums actually received upon this policy; provided, however, that in case the said premiums so actually received shall not amount to one hundred dollars, the company reserves the right to pay the surrender value in lieu of issuing the paid up policy. An assignment of this policy, to be be valid, must be made in duplicate; both must be sent to the company for acknowledgment and due proof of interest produced with the proofs of death.

In witness whereof the said New-York Life Insurance Company has, by its President and Actuary, signed and delivered this contract this twenty-second day of November, one thousand eight hundred and seventy-five.

MORRIS FRANKLIN,
President.

597 WM. H. BEERS,
Vice-President and Actuary.

Endorsed; filed July 8th, 1876.

A. ARMSTRONG,
Clerk.

JAS. O'BRIEN,
Deputy Clerk.

STATE OF MINNESOTA,
County of Ramsey, ss:

Cushman K. Davis came before me personally and being duly sworn doth say that he is the guardian *ad litem* of the plaintiff and one of the attorneys of said plaintiff in the above entitled action; that the foregoing complaint is true of his own knowledge except as to the matters which are therein stated on his information and belief, and as to those matters that he believes it to be true and that the reason why this affidavit of verification is not made by said plaintiff is that he is absent from the County of Ramsey, Minnesota, where resides this affiant and all of plaintiff's atttorneys.

C. K. DAVIS.

Subscribed and sworn to before me, this 21st day of June, 1876.

L. O. PLAISANCE,
[SEAL] *Notary Public,*
Minnesota.

DISTRICT COURT, SECOND JUDICIAL DISTRICT.

STATE OF MINNESOTA,
County of Ramsey:

EDSON C. BANGS, by his Guardian *ad litem*, CUSHMAN K. DAVIS,
vs.
THE NEW-YORK LIFE INSURANCE COMPANY.

To the above named Court:

The petition of the New-York Life Insurance Company respectfully
598 shows to the Court that an action has been commenced in this Court against your petitioner by Edson C. Bangs, by his guardian *ad litem*, Cushman K. Davis, the plaintiff above named.

That said action is brought upon an alleged breach by your petitioner of two contracts of life insurance, and that the matter in dispute exceeds the sum of five hundred dollars, exclusive of costs, as appears from the complaint in said action. That the said Edson C. Bangs is a citizen of the State of Minnesota, and that Cushman K Davis, his said guardian *ad litem*, is also a citizen of the State of Minnesota, and that your petitioner, the defendant in said action is a corporation, created by and doing business in the State of New-York, and is a citizen of the State of New-York.

Your petitioner, therefore, now enters its appearance in said action, and hereby offers good and sufficient surety for your petitioners entering in the Circuit Court of the United States for the District of Minnesota, next to be held on the first day of its session, copies of the process against your petitioner, and of all pleadings, depositions, testimony and other proceedings in the cause (no special bail having been originally requisite therein), according to the law and practice of the United States and its courts. Your peti-
599 tioner thereupon asks that the said action may be removed for trial into the Circuit Court of the United States, next to be held in the District of Minnesota, pursuant to the provisions of the Statute of the United States in such case made and provided, and this court do accept the surety offered by your petitioners as aforesaid, and do proceed no farther in said action, and for such other or further relief as may be just.

BIGELOW, FLANDRAU & CLARK,
Attorneys for Petitioner,
St. Paul, Minnesota.

STATE OF MINNESOTA,
County of Ramsey, ss:

Greenleaf Clark, one of the attorneys for the petitioner in the foregoing, being duly sworn, deposes and says that the said petition is true to best of his knowledge, information and belief, and that the reason why the said petition is verified by deponent and not by an officer of said petitioner, is, that

all the officers of said petitioner are absent, as deponent believes, from the State of Minnesota, wherein its said attorney resides.

GREENLEAF CLARK.

600 Subscribed and sworn to before me, this 6th day of July, 1876.

GEO. C. SQUIRES,
Notary Public,
Ramsey County, Minnesota.

Endorsed; Filed July 6, 1876.
A. ARMSTRONG,
Clerk.

Know all men by these presents, that we, Horace R. Bigelow and Greenleaf Clark, of St. Paul, Minnesota, are held and firmly bound unto Edson C. Bangs, of Faribault, in the same State, in the sum of one thousand dollars, lawful money of the United States, to be paid unto the said Edson C. Bangs, his executors, administrators, or assigns for which payment well and truly to be made we bind ourselves, our heirs, executors and administrators firmly by these presents.

Sealed with our seals, and dated this 6th day of July, A. D. 1876.

Whereas the above named Edson C. Bangs, by his guardian *ad litem*, Cushman K. Davis, has commenced an action in the District Court for the Second Judicial District of the State of Minnesota, against the New-York Life Insurance Company, and whereas the said Company has entered its appearance in said action, in said Court, and at the same time has filed its petition for the removal of said action into the Circuit Court of the United States, next to be held in the District of Minnesota, pursuant to the provisions of the Statutes of the United States in such cases made and provided.

Now, therefore: If the said New-York Life Insurance Company shall enter in said Circuit Court, on the first day of its session, copies of the
601 process against said Company and of all pleadings, depositions, testimony and other proceedings in said action according to the law and practice of the United States and its courts, then this obligation is to be void, otherwise remain in full force and virtue.

Executed in presence of

H. R. BIGELOW. [SEAL.]
GREENLEAF CLARK. [SEAL.]

F. G. INGERSOLL.
CHAS. E. FLANDRAU.

STATE OF MINNESOTA,
County of Ramsey, ss:

Be it known that on this 6th day of July, 1876, before me personally appeared Horace R. Bigelow, Greenleaf Clark, to me well known to be the same persons who executed the foregoing bond, and each severally acknowledged that he executed the same.

GEO. C. SQUIRES,
Notary Public,
[SEAL.] Ramsey County, Minnesota.

STATE OF MINNESOTA,
County of Ramsey, ss:

Horace R. Bigelow and Greenleaf Clark came personally before me and being duly sworn each for himself, doth depose and say that he is a resident and freeholder of and in the State of Minnesota, and that he is worth the sum of one thousand dollars above his debts and liabilities and exclusive of his property exempt from execution, and that he is one of the obligors named in the foregoing bond.

H. R. BIGELOW,
GREENLEAF CLARK.

Severally subscribed and sworn to before me, this 6th day of July, A. D. 1876.

GEO. C. SQUIRES,
[SEAL.] *Notary Public,*
Ramsey County, Minnesota.

602 Endorsed; Filed July 6th, 1876.

A. ARMSTRONG,
Clerk.

DISTRICT COURT, SECOND JUDICIAL DISTRICT.

STATE OF MINNESOTA,
County of Ramsey:

EDSON C. BANGS, by his Guardian *ad litem*, CUSHMAN K. DAVIS,
vs.
THE NEW-YORK LIFE INSURANCE COMPANY.

The defendant in this action having this day entered its appearance therein, and having at the same time filed a petition praying for the removal of said action to the Circuit Court of the United States for the District of Minnesota, pursuant to the act of Congress, in such case made and provided, and offered the surety as therein provided by a bond now filed; on application of Bigelow, Flandrau & Clark, attorneys for said defendant, it is ordered that the plaintiff show cause before the Court, at a special term thereof, to be held in the City of St. Paul, in said County, on Saturday, the 8th day of July, A. D. 1876, at the opening of said Court, or as soon thereafter as counsel can be heard, why the prayer of said petitioner should not be granted. It is further ordered that a copy of this order be served this day on Messrs. Davis, O'Brien & Wilson, the attorneys for said plaintiff, and that said attorneys file the summons and complaint in said action in this Court by the return day of this order.

Endorsed; Dated July 6th, 1876.

W. WILKIN,
District Judge.

Due personal service of a copy of the within order is hereby admitted this 6th day of July, A. D. 1876.

DAVIS, O'BRIEN & WILSON,
603 *Plaintiffs' Attorneys.*

Filed July 6th, 1876.

A. ARMSTRONG,
Clerk.

DISTRICT COURT, SECOND JUDICIAL DISTRICT.

STATE OF MINNESOTA,
County of Ramsey:

EDSON C. BANGS, by his Guardian *ad litem*, CUSHMAN K. DAVIS,
vs.
THE NEW-YORK LIFE INSURANCE COMPANY.

SIRS: Please take notice that we are retained and appear as attorneys for the defendant in the above entitled action.

Dated July 6th, A. D. 1876.

Yours respectfully,
BIGELOW, FLANDRAU & CLARK,
Attorneys for Defendant.

To
MESSRS. DAVIS, O'BRIEN & WILSON,
Attorneys for Plaintiff.

Due service of the within notice is hereby admitted at St. Paul, Minnesota, on this 6th day of July, A. D. 1876.

DAVIS, O'BRIEN & WILSON,
Attorneys for Plaintiff.

Filed July 6th, 1876.
A. ARMSTRONG,
Clerk.

DISTRICT COURT, SECOND JUDICIAL DISTRICT.

STATE OF MINNESOTA,
County of Ramsey, ss:

EDSON C. BANGS, by his Guardian *ad litem*, CUSHMAN K. DAVIS,
vs.
THE NEW-YORK LIFE INSURANCE COMPANY.

SPECIAL TERM, ST. PAUL, JULY 8TH, A. D. 1876.

A petition having been filed in this action by the defendant therein, on the 6th day of July, A. D. 1876, praying for the removal of said action into the Circuit Court of the United States for the District of Minnesota, pursuant to the statutes of the United States in such case made and provided, and the said petitioner having at the time of the filing of said petition offered
604 good and sufficient surety, pursuant to the directions of and as required by the said statutes; now, on motion of Bigelow, Flandrau & Clark, of counsel for the petitioner, upon due notice to Messrs. Davis, O'Brien

& Wilson, the attorneys for said plaintiff, it is declared that it appears to the satisfaction of this Court that the plaintiff is a citizen of the State of Minnesota, and that said defendant is a corporation created by the laws of the State of New-York and a citizen of the State of New-York, and that the amount in dispute in said action, exclusive of costs, exceeds the sum of five hundred dollars, and it is further declared and ordered that this Court accept the surety offered by the petitioner, and that the said action be removed for trial into the Circuit Court of the United States for the District of Minnesota, next to be held pursuant to the said statutes; that this Court do proceed no further therein, and that all proceedings in this Court in said action be and the same are hereby stayed.

By the Court,

ORLANDO SIMONS,
Judge.

Endorsed; Filed July 8th, 1876.

A. ARMSTRONG,
Clerk.

JAS. O'BRIEN,
Deputy.

STATE OF MINNESOTA,
Ramsey County, ss:

I, Albert Armstrong, Clerk of District Court, Ramsey County, and State of Minnesota, do hereby certify that I have compared the foregoing
605 paper writing with the original summons and complaint, defendant's petition for removal, bond for removal, order to show cause, notice of appearance and appointment of guardian *ad litem*, and order for removal in the action therein entitled, now remaining of record in my office, and that the same is a true and correct copy and transcript of said original, and the whole thereof.

Witness my hand and seal of said Court, at St. Paul, this 23d
[SEAL.] day of November, 1876.

A. ARMSTRONG,
Clerk.

By C. H. MANSHIP,
Deputy Clerk.

Endorsed; Filed Dec. 11th, 1876.

H. E. MANN,
Clerk.

CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF MINNESOTA.

EDSON C. BANGS by his Guardian *ad litem*, CUSHMAN K. DAVIS,
vs.
THE NEW-YORK LIFE INSURANCE COMPANY.

The answer of the defendant to the complaint in this action respectfully shows to the court that on or about the 27th day of October, A. D. 1875, one

James H. Bangs, mentioned in said complaint, then a citizen and resident of Pontiac in the State of Michigan, but now deceased, acting for himself and on behalf of his minor son, the said Edson C. Bangs, also a resident and citizen of said Pontiac, made an application in writing bearing that date to the defendant for a policy of life insurance on the Tontine Investment
606 Policy Plan, so called, in the sum of five thousand dollars on the life of him, the said James H. Bangs, for the benefit of the said Edson C., a copy of which application, together with the certificate of the medical examiner, which was appended thereto, is hereto annexed, marked "Exhibit A," and made a part of this answer.

That on or about the 6th day of November, 1875, said James H. Bangs, likewise acting for himself and on behalf of the said Edson C., made another application in writing bearing that date to the defendant for another policy of life insurance in the sum of five thousand dollars on the life of him, the said James H. Bangs, for the benefit of said Edson C., a copy of which last mentioned application, with the certificate of the medical examiner, which was appended thereto, is hereto annexed, marked "Exhibit B," and made a part of this answer.

That afterwards and on or about the 22d day of November, 1875, the defendant, acting in reliance upon the truth and correctness of all and singular the statements, warranties, representations and declarations in the application first hereinbefore mentioned, expressed and implied, and upon the hon-
607 esty and good faith of the said applicants in the premises, made and issued the policy of insurance first in said complaint mentioned, and annexed to said complaint as "Exhibit A"; and that the written application mentioned in said policy is the same application first hereinbefore mentioned, and a copy of which is so hereto annexed, marked "Exhibit A."

And that at the same time last aforesaid this defendant, in like manner acting in reliance upon the truth and correctness of all and singular the statements, warranties, representations and declarations in the application secondly herein above mentioned, expressed and implied, and upon the honesty and good faith of the said applicants in the premises, made and issued the policy of insurance secondly in said complaint mentioned, and annexed to said complaint as "Exhibit B"; and that the written application mentioned and referred to in said policy is the same application secondly herein above mentioned, and a copy of which is hereto annexed, marked "Exhibit B."

That the said policies were, and each of them, delivered to the said James H. Bangs, on the second day of December, 1875.

That the sums named in the said policies as first premiums, and designated as paid upon the issuing of said policies, were not in fact paid, but that
608 in lieu of such payment said James H. Bangs made and gave to the defendant his individual promissory note for the sum of two hundred and five dollars and eighty cents, bearing date the 16th day of November, 1875, payable in twenty days after the date thereof; which said note has not been paid, nor any part thereof, and is in the possession of the defendant ready to be surrendered and canceled, of which the plaintiff has had due notice; and that the said James H. Bangs never in fact paid any premiums on, or other consideration for the said policies, or either of them; and that the said Edson C. Bangs has never paid any premiums whatever on the said policies, or any consideration whatever for the same, or promised or agreed so to do.

That shortly after the delivery of said policies of insurance, and on the 5th day of December, A. D. 1875, the said James H. Bangs, at said Pontiac, died by willful suicide, to wit: from the effects of poison voluntarily taken by him with the intention and purpose of producing, and which resulted in his death.

The defendant further shows, that in applying for and obtaining said poli-

cies, the said James H. Bangs was held out and represented to the de-
609 fendant to be sound in health, correct in habits, and with every pros-
pect of a long life, and to be a person who fully intended to live as long as he should be able to live in the course of nature; and that in the issuing of the said policies, and each of them, the defendant relied implicitly upon all the aforesaid representations, statements, declarations, and warranties, and believed the same to be true, and would not otherwise have accepted the said risks, or made or issued the said policies, or either of them.

Yet notwithstanding the premises, the defendant avers that the said statements and representations were false and fraudulent, and that at the time the said applications, representations and statements were made, and at the time the said policies were applied for and obtained, the said James H. Bangs intended to procure the said policies and to effect his own death within a short time thereafter, and thereby to defraud the defendant out of the amounts of
money agreed to be paid in and by said policies respectively, which
610 intention and fraudulent purpose was concealed from the defendant and
did not come to its knowledge until after the death of the said James H. Bangs; and that in furtherance of the said fraudulent purpose the said policies were so obtained, and the death of the said James H. Bangs was so accomplished as aforesaid; and that by reason of the premises the said policies, and each of them, are void and of no effect.

The defendant further answering admits the age and infancy of the plaintiff, and the corporate character and business of the defendant, as alleged in the complaint; and that no part of the policies described in the complaint has been paid.

The defendant denies each and every allegation contained in said complaint, except as herein above stated and admitted.

Wherefore the defendant demands judgment that the plaintiff take nothing by this action, and for the costs and disbursements thereof.

BIGELOW, FLANDRAU & CLARK,
Attorneys for Defendants,
St. Paul, Minnesota.

District of Minnesota, ss:

Greenleaf Clark came before me personally, and being duly sworn, doth say that he is one of the defendant's attorneys in the above entitled action;
that the foregoing answer is true to the best of his knowledge, informa-
611 tion and belief, and that the reason why this verification is made by deponent and not by any of the officers of the defendant is that said defendant and all of said officers are now absent from the said District of Minnesota, where said attorneys reside.

GREENLEAF CLARK.

Subscribed and sworn to before me on this 27th day of December, A. D. 1876.

[NOTARIAL SEAL.]

GEO. C. SQUIRES,
Notary Public,
Ramsey County, Minnesota.

Exhibit A.

APPLICATION TO THE NEW-YORK LIFE INSURANCE CO.

OFFICE, NOS. 346 AND 348 BROADWAY, NEW-YORK.

Particulars required from Persons proposing to effect Insurance on Lives in this Company, and forming the basis of the Contract. No. of Policy, 116,731.

PONTIAC, MICHIGAN, Post-Office address.

1. Name (in full) of the party whose life is proposed to be insured? James H. Bangs.
2. Present residence? Pontiac, in the County of Oakland, in the State of Michigan.
3. Profession or occupation? (State precise nature of business.) Manufacturer of flour.
4. Place and date of birth? Barnstable County, Massachusetts, August 26th, 1829.
5. Age next birthday? 47. (Note—See that these ages and date of birth agree.) Age nearest birthday? 46.
6. Is said party married or single? Married.
7. A. Are the habits of said party at the present time, and have they always been, sober and temperate? A. Yes.
   B. Does the party use intoxicating drinks habitually as a beverage? B. No.
612 C. Is the person engaged *in any way* in the retailing of alcoholic liquors? C. No.
8. Has the party had yellow fever? If so, when, where, and who was the medical attendant? No.
9. Has the party been successfully vaccinated? Been vaccinated successfully.
10. Is the party subject or predisposed to dyspepsia, dysentery, diarrhœa, or any other disease or bodily infirmity? No.
11. Has the party had, or been afflicted since childhood, with any of the following complaints?—

(Separate answer required to each query.)

Diseases of the lungs or pulmonary complaints? No.
Spitting or raising of blood? No.
Rupture? No.
Fits or convulsions? No.
Insanity? No.
Rheumatism? No.
Dropsy? No.
Bronchitis? No.
Fistula? No.
Bilious colic? No.
Paralysis? No.
Apoplexy? No.
General debility. No.
Spinal disease? No.
Gout? No.
Cancer? No.

Small-pox? No.
Scrofula? No.
Eruptions or diseases of the skin? No.
Syphilis? No.
Asthma? No.
Palpitation or disease of the heart? No.
Disease of the liver, kidneys or brain? No.
Or any serious disease? No.

12. Has the party ever met with any accidental or serious personal injury? No.

13. Has the party ever been seriously ill? If so, when—with what
613 complaint, and who was the medical attendant? (State his name and residence.) No.

14. Is the said party now in good health? Yes.

15. Has either of the parents, or any brother or sister of said party died of or been afflicted with consumption, scrofula, insanity, gout, or any pulmonary complaint, or any hereditary disease? (State particulars.) No.

16. A. Are the party's parents living? If so, what are their ages? Father died at 69; mother, 76.

B. If dead, at what ages, and of what diseases did they die? Father's age at death, 69. Cause of death, dyspepsia. Mother's age at death, 76. Cause of death, old age.

N. B.—In giving "Cause of Death," avoid all indefinite terms, such as "Fever," "General Debility," "Exposure," etc. If the word "Childbirth" be used, specify how long after delivery the death occurred, and whether it was accompanied by any disease of the chest.

17. How many brothers and sisters has the party had? Two brothers and three sisters.

18. How many are living, and what are their ages? One brother's age, 49; two sisters' ages, 52 and 58.

19. How many of them are dead, and at what ages and of what
614 diseases did they die? Brothers dead, one; age, 7 years. Cause of death, do not know. Sisters dead, one; age, 31 years. Cause of death, dysentery.

20. What is the present and general state of health of parties referred to in queries 16 and 18? Good.

21. Is the party now insured in this Company, or has he ever been? And if so, *state numbers of policies and amount.* No.

22. Has the party any other insurance on his life? If so, where and for what amounts? $2,500 in Continental, N. Y.

23. Has any proposal to insure the life of said party ever been declined? If so, by what Company? No.

24. Has any proposal or application to insure the life of said party ever been made to any Company or agent upon which a policy has not been issued? If so, state full particulars. No.

25. Has any physician given an unfavorable opinion upon the life of said party with reference to life insurance? If so, state particulars. No.

26. Where has the party resided (during summer and winter) during the last ten years? In Minnesota and Pontiac.

27. Name and residence of person's usual medical attendant? On what occasions, and for what diseases have you required his attendance and
615 advice? Have none. Have had no occasion. None employed.

If the applicant has required the services of a physician during the last seven years, or for serious illness before that period, this certificate must be procured, or the issuing of the policy may be delayed.

28. Have you consulted any other medical man? If so, for what and when? No.

29. Name and residence of an intimate friend? Alfred C. Been, Faribault, Minnesota; Daniel Hubbell, Pontiac.

The policy will not be issued until this certificate is furnished to the company.

30. Sum to be insured, $5,000. Premium—how payable? Semi-annually. On what table? Ordinary life.

31. Name (in full), residence and occupation of the party in whose favor the insurance is proposed, and *relationship*, if any, to the party whose life is proposed to be insured. Edson C. Bangs, son of the insured.

32. Do you desire a policy issued on the "Tontine Investment Policy" plan? If so, specify whether you select the Ten Year, Fifteen Year, or Twenty Year Tontine Period. I select the Ten Year Tontine Period.

NOTE.—Insert number of years in writing.

33. Has the "Tontine Investment Policy" plan, referred to in
616 question 32, been fully explained to you, and do you authorize the Company to retain the dividends on the policy hereby applied for, and to place the same in a reserve fund in which you are to participate in accordance with the provisions made by the Company regarding policies in the class you have selected, and not otherwise? Yes.

NOTE.—This question is to be answered whenever a policy is desired on the "Tontine Investment Policy" plan, and not otherwise.

34. Does the party wish a policy in "Southern Class" of this Company, with permission to travel and reside, at all seasons of the year, in any Southern State, it being understood and agreed that in the making of dividends upon policies of this class, regard shall be had to the mortality actually experienced in said class, compared with the mortality of the rest of the assured? No.

NOTE.—This question is to be answered in the affirmative only by those who reside permanently south of a line beginning at the point of intersection of the northerly boundary of North Carolina with the Atlantic coast; thence running westerly along the said northerly boundary to a point one hundred miles from the coast; thence in a south-westerly direction, continuing one hundred miles from said coast to the thirty-fourth
617 parallel of latitude; thence westerly along said parallel to the westerly border of Alabama (excepting the city of Atlanta and an area within a radius of fifty miles around it); thence northerly along the westerly border of Alabama and along the Tennessee River to the northerly boundary of Tennessee; thence westerly along the northerly boundary of Tennessee and Arkansas, extended to the ninety-seventh degree of west longitude; thence southerly to the thirty-second parallel of north latitude; thence westerly along the said parallel to the Pacific Ocean.

35. Is the party aware that any untrue or fraudulent answers to the above queries, or any suppression of facts in regard to the party's health will vitiate the policy and forfeit all payments made thereon? Yes.

I do hereby declare that the age of James H. Bangs, the person above named, does not now exceed 46 years, that he is now in good health, and does ordinarily enjoy good health, and that in the above proposal I have not withheld any material circumstance or information touching the past or present
618 state of health or habits of life of said person with which the trustees of the New-York Life Insurance Company ought to be made acquainted. (And that I have an interest in the life of the said person to the full amount of the said sum of $5,000.)

And I do hereby agree that the statements and representations contained in the foregoing application and declaration shall be the basis of the contract between me and the said company; the truthfulness of which statements and representations I do hereby warrant, and that if the same, or any of them are in

any respect untrue, the policy which may be issued hereon shall be void, and all moneys which may have been paid on account of such insurance shall be forfeited to said company; and inasmuch as only the officers at the Home Office of the Company, in the City of New-York, have authority to determine whether or not a policy shall issue on any application, and as they act on the written statements and representations referred to, it is expressly
619 understood and agreed, that no statements, representations, or information made or given by or to the person soliciting or taking this application for a policy, or to any other person, shall be binding on the company, or in any manner affect its rights, unless such statements, representations, or information be reduced to writing, and presented to the officers of the company, at the home office, in the above application. I further agree, that under no circumstances shall the policy be in force until the actual payment to, and acceptance of, the premium by an authorized agent of the company.

Dated at Pontiac, this 27th day of October, 1875.

Agent: DANIEL HUBBELL.

Witness: W. BOYD AGER.

*Signature of the person or persons for whose benefit the insurance is to be effected. (Write the names in full.)

EDSON C. BANGS.
Per JAMES H. BANGS.

Signature of the person whose life is proposed for Insurance. (Write the names in full.)

JAMES H. BANGS.

* NOTE—In case of husband and wife, or parent and children, the former may sign for the latter thus: MARY SMITH by JOHN SMITH.

SOLON MCELROY, *Manager.*

MEDICAL EXAMINER'S REPORT.

WHERE OVER $10,000 IS REQUIRED, THE EXAMINATION OF APPLICANT BY TWO EXAMINERS IS NECESSARY.

The Blanks are to be filled up by the Medical Examiner in his own handwriting.

1. Name (in full) of the examined? James H. Bangs.

620 The examiner will satisfy himself of the identity of the person examined with the person described on the other side.

How long have you personally known the party whose life is proposed to be insured? By sight for six months.

2. Please state the following particulars as fully and exactly as possible:

Weight? One hundred and fifty-five pounds.

Height? Five feet seven and one-half inches.

Measure round the abdomen? Thirty-three inches.

Circumference of the chest under the vest? Ordinary state, 35; expanded, 37.

Figure? Erect.

Race? Anglo-Saxon.

Is the general appearance that of health and vigor? Yes.

Hair? Light.

Eyes? Blue.

Complexion? Fair.
Is the skin clear and healthy? Yes.
Is the gait firm and elastic? Yes.
Is the muscle hard and strong? Yes.
Temperament? Sanguine-nervo.
Are the bones large or small? Medium.

3. A. Whether any signs of affection of the head, or of predisposition to it? A. No.
B. Whether paralysis, vertigo, tremors, catchings of any part, or any other nervous affection? B. No.
C. Are the functions of the muscular and nervous systems in a healthy state? C. Yes.

4. Does auscultation and percussion of the chest indicate any disease of the heart or respiratory organs? No.

5. A. Is the respiratory murmur clear and distinct over both lungs? A. Yes.
B. Is the character of the respiration full, easy and regular? B. Yes.
C. Are there any indications of disease of the organs of respiration? C. No.

6. A. Is the character of the heart's action uniform, free and steady? A. Yes.
621 B. Are its sounds and rhythm regular and normal? B. Yes.
C. Are there any indications of disease of this organ, or of the blood vessels? C. No.

7. A. State the rate and other qualities of the party's pulse? A. Sixty-six, standing soft and full.
B. Does it intermit? B. No.
C. Does it become irregular or unsteady? C. No.

8. State whether subject to any cutaneous eruption on any part of the body, and, if so, of what nature? No.

9. Whether habitual cough or expectoration, occasional difficulty of breathing, or palpitation? No.

10. A. Are the functions of the abdominal and urinary organs in a healthy condition? A. Yes.
B. Are there any indications of Bright's disease of the kidneys? B. No.
C. If any rupture, state whether reducible or not, and if a truss is worn? C. No.

11. Has the person any predisposition, either hereditary or acquired, to any local or constitutional disease? No.

12. Have the person's parents, brothers or sisters, been afflicted with pulmonary or other diseases, hereditary in their nature? No.

13. A. Has the person ever had any severe injury or illness? A. No.
B. If so, has it had any effect on his constitution? B. No.
622 C. Is there any indication that he is not now entirely well? C. No.
D. Whether deaf, dumb, blind or lame? D. No.

14. A. Does the party habitually use ardent spirits, wine, or malt liquors? A. No.
B. If so, to what extent? B. ——.
C. Are there any indications that would lead you to suppose that the applicant has led, or leads, other than a sober and temperate life? C. No.

15. If the person's weight be much over or under the average, or if the family history, or if any disease or injury, or any circumstance con-

nected with him (or her), should seem to affect seriously the character of the risk, the reason for recommending it should here be given? ——

16. A. Have you carefully read the *answers* of the applicant in the annexed application? A. Yes.

B. Do they reveal any facts which you deem of special importance to comment upon in your report, and, if so, what are they? B. No.

17. Has the medical examiner asked the necessary questions to satisfy himself that the material statements as to the family history, personal habits, and past and present health of the applicant, in the within application, are correct? Yes.

18. Signature of party examined, *written in presence of the medical examiner?* James H. Bangs.

19. A. Were you to divide according to probable longevity all 623 persons of same age and sex as applicant into five classes, would you place applicant in the first and best class, second, third, fourth or fifth class? A. First class.

NOTE.—The limits of each class will be clearly defined by the understanding that each class is to embody an equal number of individuals.

B. Do you recommend that a policy be issued? (*Yes or No.*) B. Yes.

The medical examiner is earnestly requested to answer the above questions minutely, and to propose such other queries as in his judgment are necessary for a full elucidation of the risk.

Should the examination develop points of doubt as to the safety of a risk believed on the whole to be good, the examiner may send a letter direct to the Company at New-York, with full explanations. This letter will be considered strictly confidential.

The examiner will feel the responsibility of his position, bearing in mind that in deciding whether to accept or decline a risk at a distance, the Company place great reliance upon his statements. If hereafter it should turn out that this examination had not been thorough—that due care had not been used—that the assurant was not so good a subject as had been represented—it would be not only detrimental to the interests of the Company, but injurious to the examiner.

The examiner will require the applicant or agent to procure the family physi- 624 cian's certificate, as it may contain important suggestions, unless such certificate is clearly unnecessary.

F. B. GALBRAITH, M. D.,
Medical Examiner.

Examined at Pontiac this 16th day of November, 1875.

ADDITIONAL REMARKS.

Approved November 22d, 1875. { C. R. BOGART, M. D. / GEO. WILKES, M. D. / CHAS. WRIGHT, M. D.

Exhibit B.

APPLICATION TO THE NEW-YORK LIFE INSURANCE CO.

OFFICE, NOS. 346 AND 348 BROADWAY, N. Y.

Particulars required from Persons proposing to effect Insurance on Lives in this Company, and forming the basis of the Contract. No. of Policy, 116,732.

PONTIAC, MICHIGAN, Post-office Address.

1. Name (in full) of the party whose life is proposed to be insured? James Henry Bangs.

2. Present residence? Pontiac, in the County of Oakland, in the State of Michigan.

3. Profession or occupation? (State precise nature of business.) Merchant miller.

4. Place and date of birth? Barnstable County, Massachusetts, August 26th, 1829.

5. Age next birthday? Forty-seven. Age nearest birthday? Forty-six. (Note—See that these ages and date of birth agree.)

6. Is said party married or single? Married.

7. A. Are the habits of said party at the present time, and have they always been, sober and temperate? A. Yes.

625 B. Does the party use intoxicating drinks habitually as a beverage? B. No.

C. Is the person engaged in any way in the retailing of alcoholic liquors? C. No.

8. Has the party had yellow fever—if so, when, where, and who was the medical attendant? No.

9. Has the party been successfully vaccinated? Yes.

10. Is the party subject or predisposed to dyspepsia, dysentery, diarrhœa, or any other disease or bodily infirmity? No.

11. Has the party had or been afflicted since childhood, with any of the following complaints? (Separate answer required to each query.)

Diseases of the lungs, or pulmonary complaints? No.
Spitting or raising of blood? No.
Rupture? No.
Fits or convulsions? No.
Insanity? No.
Rheumatism? No.
Dropsy? No.
Bronchitis? No.
Fistula? No.
Bilious colic? No.
Paralysis? No.
Apoplexy? No.
General debility? No.
Spinal disease? No.
Gout? No.
Cancer? No.
Small-pox? No.
Scrofula? No.
Eruptions or diseases of the skin? No.
Syphilis? No.
Asthma? No.
Palpitation or disease of the heart? No.
Diseases of the liver, kidneys or brain? No.
Or any serious disease? No.

12. Has the party ever met with any accidental or serious personal injury? No.

13. Has the party ever been seriously ill? If so, when, with what
626 complaint, and who was the medical attendant? (State his name and residence.) No.

14. Is the said party now in good health? Yes.

15. Has either of the parents or any brother or sister of said party died of or been afflicted with consumption, scrofula, insanity, gout, or any pulmonary complaint, or any hereditary disease? (State particulars.) No.

16. A. Are the party's parents living? If so, what are their ages? No. Father's age, if living? Mother's age, if living?

B. If dead, at what ages and of what diseases did they die? Father died at 69; mother, 76. B. Father's age at death, 69; cause of death, dyspepsia. Mother's age at death, 76; cause of death, old age.

N. B.—In giving "Cause of Death," avoid all indefinite terms, such as "Fever," "General Debility," "Exposure," etc. If the word "Childbirth" be used, specify how long after delivery the death occurred, and whether it was accompanied by any disease of the chest.

17. How many brothers and sisters has the party had? Five.—Brothers 2; sisters, 3.

18. How many are living, and what are their ages? Three; brother's age, 49; sisters' ages, 52 and 58.

19. How many of them are dead, and at what ages, and of what
627 diseases did they die? Brother dead, 1; age, childhood, about 7 years; cause of death, do not know. Sister dead, 1; age, 31; cause of death, dysentery.

20. What is the present and general state of health of parties referred to in queries 16 and 18? Good.

21. Is the party now insured in this company, or has he ever been? and if so, state numbers of policies and amount? No.

22. Has the party any other insurance on his life; if so, where and for what amounts? $2,500 in Continental, N. Y.

23. Has any proposal to insure the life of said party ever been declined; if so, by what company? No.

24. Has any proposal or application to insure the life of said party ever been made to any company or agent upon which a policy has not been issued; if so, state full particulars? No.

25 Has any physician given an unfavorable opinion upon the life of said party with reference to life insurance; if so, state particulars? No.

26. Where has the party resided (during summer and winter) during the last ten years? Minnesota.

27. Name and residence of person's usual medical attendant? On what occasions and for what diseases have you required his attendance and advice? Have no medical attendant.

If the applicant has required the services of a physician during the last seven
628 years, or for serious illness before that period, this certificate must be procured, or the issuing of the policy may be delayed.

28. Have you consulted any other medical man; if so, for what and when? No.

29. Name and residence of an intimate friend? Alfred C. Been, Faribault, Minn., Daniel Hubbell, Pontiac.

The policy will not be issued until this certificate is furnished to the Company.

30. Sum to be insured? $5,000. Premium how payable? Semi-annually. On what table? Ordinary life.

31. Name (in full), residence and occupation of the party in whose favor the insurance is proposed, and relationship, if any, to the party whose life is proposed to be insured? Edson C. Bangs, son of insured.

32. Do you desire a policy issued on the "Tontine Investment Policy" plan; if so, specify whether you select the ten year, fifteen year or twenty year Tontine period?

NOTE.—Insert number of years in writing.

33. Has the "Tontine Investment Policy" plan, referred to in question 32, been fully explained to you, and do you authorize the company to retain the dividends on the policy hereby applied for, and to place the same
629 in a reserve fund, in which you are to participate in accordance with the provisions made by the company regarding policies in the class you have selected, and not otherwise? Yes.

NOTE.—This question is to be answered whenever a policy is desired on the "Tontine Investment Policy" plan, and not otherwise.

34. Does the party wish a policy in the "Southern Class" of this company, with permission to travel and reside, at all seasons of the year, in any Southern State, it being understood and agreed that in the making of dividends upon policies of this class, regard shall be had to the mortality actually experienced in said class, compared with the mortality of the rest of the assured? No.

NOTE.—This question is to be answered in the affirmative only by those who reside permanently south of a line beginning at the point of intersection of the northerly boundary of North Carolina with the Atlantic coast: thence running westerly along the said northerly boundary to a point one hundred miles from the coast; thence in a south-
westerly direction, continuing one hundred miles from said coast, to the thirty-
630 fourth parallel of latitude: thence westerly along said parallel to the westerly border of Alabama (excepting the city of Atlanta and an area within a radius of fifty miles around it); thence northerly along the westerly border of Alabama and along the Tennessee River to the northerly boundary of Tennessee; thence westerly along the northerly boundary of Tennessee and Arkansas, extended to the ninety-seventh degree of west longitude; thence southerly to the thirty-second parallel of north latitude; thence westerly along the said parallel to the Pacific Ocean.

35. Is the party aware that any untrue or fraudulent answers to the above queries, or any suppression of facts in regard to the party's health, will vitiate the policy and forfeit all payments made thereon? Yes.

I do hereby declare that the person above named, whose life is proposed for insurance, is now in good health, and does ordinarily enjoy good health, and that in the above proposal I have not withheld any material circumstance or information touching the past or present state of health or habits of
631 life of said person with which the trustees of the New-York Life Insurance Company ought to be made acquainted. (And that I have an interest in the life of the said person to the full amount of the sum hereby applied for.)

And I do hereby agree that the statements and representations contained in the foregoing application and declaration shall be the basis of the contract between me and the said company; the truthfulness of which statements and representations I do hereby warrant, and that if the same or any of them are in any respect untrue, the policy which may be issued hereon shall be void, and all moneys which may have been paid on account of such insurance shall be forfeited to said company; and inasmuch as only the officers at the home office of the company, in the City of New-York, have authority to determine whether or not a policy shall issue on any application, and as they act on the written statements and representations referred to, it is expressly understood and agreed that no statements, representations or information made or given by or to the person soliciting or taking this application for a policy, or to any other person, shall be binding on the company, or in any manner affect its rights, unless such statements, representations or information be reduced to writing, and presented to the officers of the company

at the home office, in the above application. I further agree that under no circumstances shall the policy be in force until the actual payment to and acceptance of the premium by an authorized agent of the company.

632

Dated at Pontiac, Michigan, this 6th day of November, 1875.

*Signature of the person or persons for whose benefit the insurance is to be effected (Write the names in full.)

EDSON C. BANGS.
Per JAMES H. BANGS.

Signature of the person whose life is proposed for insurance. (Write the names in full.)

JAMES H. BANGS.

Witness: DANIEL HUBBELL.
Agent: DANIEL HUBBELL AND J. S. WILCOX.

*NOTE.—In case of husband and wife, or parent and children, the former may sign for the latter thus: MARY SMITH by JOHN SMITH.

SOLON MCELROY, *Manager*, Chicago, Ill.

MEDICAL EXAMINER'S REPORT.

WHERE OVER $10,000 IS REQUIRED, THE EXAMINATION OF APPLICANT BY TWO EXAMINERS IS NECESSARY.

The Blanks are to be filled up by the Medical Examiner in his own handwriting.

1. Name (in full) of the person examined? James Henry Bangs.

633 How long have you personally known the party whose life is proposed to be insured? By sight for six months.

The examiner will satisfy himself of the identity of the person examined with the person described on the other side.

2. Please state the following particulars as fully and exactly as possible:

Weight? 155 lbs.
Height? 5 feet 7½ inches.
Measure round the abdomen? 33 inches.
Circumference of the chest under the vest? Ordinary state, 35 inches; expanded, 37 inches.
Figure? Erect.
Is the general appearance that of health and vigor? Yes.
Hair? Light.
Eyes? Blue.
Complexion? Fair.
Is the skin clear and healthy? Yes.
Is the gait firm and elastic? Yes.
Is the muscle hard and strong? Yes.
Temperament? Nervo-sanguine.
Are the bones large or small? Medium.

3. A. Whether any signs of affection of the head, or of predisposition to it? A. No.
B. Whether paralysis, vertigo, tremors, catchings of any part, or any other nervous affection? B. No.
C. Are the functions of the muscular and nervous systems in a healthy state? C. Yes.

4. Does auscultation and percussion of the chest indicate any disease of the heart or respiratory organs? No.

5. A. Is the respiratory murmur clear and distinct over both lungs? A. Yes.
B. Is the character of the respiration full, easy and regular? B. Yes.
C. Are there any indications of disease of the organs of respiration? C. No.

6. A. Is the character of the heart's action uniform, free and steady? A. Yes.
B. Are its sounds and rhythm regular and normal? B. Yes.
C. Are there any indications of disease of this organ or of the blood vessels? C. No.

634 7. A. State the rate and other qualities of the party's pulse? A. 66, standing, soft and full.
B. Does it intermit? B. No.
C. Does it become irregular or unsteady? C. No.

8. State whether subject to any cutaneous eruption on any part of the body, and, if so, of what nature? None.

9. Whether habitual cough or expectoration, occasional difficulty of breathing, or palpitation? No.

10. A. Are the functions of the abdominal or urinary organs in a healthy condition? A. Yes.
B. Are there any indications of Bright's disease of the kidneys? B. No.
C. If any rupture, state whether reducible or not, and if a truss is worn. C. None.

11. Has the person any predisposition, either hereditary or acquired, to any local or constitutional disease? No.

12. Have the person's parents, brothers or sisters, been afflicted with pulmonary or other diseases, hereditary in their nature? No.

13. A. Has the person ever had any severe injury or illness? A. No.
B. If so, has it had any effect on his constitution? B. No.
635 C. Is there any indication that he is not now entirely well? C. No.
D. Whether deaf, dumb, blind or lame? D. No.

14. A. Does the party habitually use ardent spirits, wine, or malt liquors? A. No.
B. If so, to what extent? B. Not at all.
C. Are there any indications that would lead you to suppose that the applicant has led, or leads, other than a sober and temperate life? C. No.

15. If the person's weight be much over or under the average, or if the family history, or if any disease or injury, or any other circumstance connected with him (or her), should seem to affect seriously the character of the risk, the reason for recommending it should here be given. ——.

16. A. Have you carefully read the *answers* of the applicant in the annexed application? A. Yes.
B. Do they reveal any facts which you deem of special importance to comment upon in your report, and if so, what are they? B. None.

17. Has the medical examiner asked the necessary questions to satisfy

himself that the material statements as to the family history, personal
636 habits, and past and present health of the applicant, in the within application, are correct? Yes.

18. Signature of party examined *written in presence of medical examiner?* James H. Bangs.

19. A. Were you to divide according to probable longevity all persons of same age and sex as applicant into five classes, would you place applicant in the first and best class, second, third, fourth or fifth class? A. First class.

NOTE.—The limits of each class will be clearly defined by the understanding that each class is to embody an equal number of individuals.

B. Do you recommend that a policy be issued? *(Yes or No.)* B. Yes.

The medical examiner is earnestly requested to answer the above questions minutely and to propose such other queries as in his judgment are necessary for a full elucidation of the risk.

Should the examination develop points of doubt as to the safety of a risk believed on the whole to be good, the examiner may send a letter direct to the Company at New-
637 York, with full explanations. This letter will be considered strictly confidential.

The examiner will feel the responsibility of his position, bearing in mind that in deciding whether to accept or decline a risk at a distance, the Company place great reliance upon his statements. If hereafter it should turn out that this examination had not been thorough—that due care had not been used—that the assurant was not so good a subject as had been represented—it would be not only detrimental to the interests of the Company, but injurious to the examiner.

The examiner will require the applicant or agent to procure the family physician's certificate, as it may contain important suggestions, unless such certificate is clearly unnecessary.

[Signed] FRANK B. GALBRAITH, M. D.,
Medical Examiner.

Examined at Pontiac, this 16th day of November, 1875.

ADDITIONAL REMARKS.

Approved November 22, 1875. C. R. BOGART, M. D.
GEO. WILKES, M. D.
CHAS. WRIGHT, M. D.

Exhibit C.

Number 116,732. Amount, $5,000.

THE NEW-YORK LIFE INSURANCE COMPANY,

By this policy of insurance, in consideration of the statements and representations submitted to its officers at the home office in the City of New-
638 York, and contained in the written application for this policy, and in the declaration thereto subjoined (all of which statements and representations have been and are hereby warranted by the applicant to be true, and are by the parties hereto referred to and made a part of this contract), upon the faith of which statements and representations this policy is issued, and of the sum of one hundred and two dollars and ninety cents, to them in hand paid, and of the annual premium of two hundred and five dollars and eighty cents to be paid in like manner and sums, as per margin, in every year during the continuance of this policy, doth insure the life of James H. Bangs,

manufacturer, of Pontiac, in the County of Oakland, State of Michigan, in the amount of five thousand dollars, for the term of his natural life, commencing on the twenty-second day of November, 1875, at noon.

And the said company doth hereby promise and agree to pay the amount of the said insurance, at its office in the City of New-York, to the assured, under this policy, to wit, Edson C. Bangs, son of said James H. Bangs, or his legal representatives, in sixty days after due notice and satisfactory proof of the death, during the continuance of this policy, of the said person whose
639 life is hereby insured as above, deducting therefrom all indebtedness to the company, together with any balance of the year's premium remaining unpaid.

This policy is issued, and accepted by the assured, upon the following express conditions and agreements:

1st. If the person whose life is hereby insured shall travel or reside beyond the settled limits or the protection of the Government of the United States (excepting in the settled limits of the Dominion of Canada, Prince Edward's Island or Newfoundland); or between the first of July and the first of November, south of a line beginning at the point of intersection of the northerly boundary of North Carolina with the Atlantic Coast; thence running westerly along the said northerly boundary to a point one hundred miles from the coast; thence in a south-westerly direction, continuing one hundred miles from said coast to the thirty-fourth parallel of latitude; thence westerly along said parallel to the westerly border of Alabama (excepting the
640 city of Atlanta, and an area within a radius of fifty miles around it); thence northerly along the westerly border of Alabama and along the Tennessee River to the northerly boundary of Tennessee; thence westerly along the northerly boundary of Tennessee and Arkansas, extended to the ninety-seventh degree of west longitude; thence southerly to the thirty-second parallel of north latitude; thence westerly along the said parallel to the Pacific Ocean; or shall enter upon a voyage upon the high seas (except as hereinafter specified); or shall be personally engaged in blasting, mining, submarine operations, or the production of highly inflammable or explosive substances; or in working or managing a steam engine in any capacity; or as a mariner, engineer, fireman, conductor, express messenger, or laborer in any capacity upon service on any sea, sound, inlet, river, lake or railroad; or shall enter any military or naval service whatsoever (the militia, when not in actual service excepted), without the consent of this company in each or either of the foregoing cases, previously given in writing; or if he shall die
641 in, or in consequence of, a duel, or of the violation of the laws of any nation, State or province; or if his death shall be caused by the use of intoxicating drink or opium; or if any of the statements or representations herein above in the first paragraph of this policy referred to shall be found in any respect untrue, then, and in every such case, this policy shall be null and void.

2d. If the premiums, as above stipulated, shall not be paid on or before the days above mentioned for the payment thereof, at the office of this company in the City of New-York (unless otherwise expressly agreed in writing), or to agents when they produce receipts signed by the president, vice-president, or actuary, then, and in every such case, this company shall not be liable for the payment of the sum assured, or any part thereof, and this policy shall cease and determine (claim for paid-up policy, as hereinafter provided for, excepted); and, the acceptance in any case, by the company, of a premium on a day subsequent to the day whereon the same is payable as above provided, shall be deemed an act of courtesy only, and shall not be deemed a waiver of the foregoing conditions as to payment of premiums accruing thereafter,
642 or as establishing any use or custom in conflict therewith. While the said company, or its agents, may, at their option, give notice of the time

of payment of said premiums, the giving of such notice shall be deemed an act of courtesy only, and shall not be deemed to establish a custom in relation thereto, or to be obligatory upon said company or its agents.

3d. In every case where this policy shall cease and determine, or become, or be null and void, all payments thereon shall be forfeited to this company, and no action or right of action shall remain to, or be maintained against this company by the assured or by any other person, by virtue of this policy, or of anything connected therewith.

4th. Receipts for premiums are not valid unless signed by the president, vice-president or actuary.

5th. Agents of the company are not authorized to make, alter or discharge contracts, or waive forfeitures.

6th. Inasmuch as only the officers at the home office of the Company, in the City of New-York, have authority to determine whether or not a policy shall issue on any application, and as they act on the written statements and representations herein above referred to, it is expressly understood and
643 agreed that no statements, representations or information made or given by or to the person soliciting or taking the application for this policy, or to any other person, shall be binding on the company, or in any manner affect its rights, unless such statements, representations or information be reduced to writing, and presented to the officers of the company, at the home office, in the application referred to.

7th. The person whose life is hereby insured has permission to pass as passenger, by direct route, in first-class vessels, as follows: 1st. To and from Europe (travel and residence wherein is hereby permitted). 2d. To and from California, and along the coast of Nova Scotia, New Brunswick and the United States, between Cape Canso and the Rio Grande (provided no port is entered in which residence, at the time of such entrance, is prohibited). 3d. Between ports on the East Pacific coast, north of 32 deg. of north latitude. 4th. Between ports on the East Pacific coast, north of 32 deg. of north latitude, and ports in the Sandwich Islands, China and Japan.

If, after premiums upon this policy for not less than three complete
644 years shall have been duly received by the company, this policy shall cease and determine in consequence of default in payment of a subsequent premium, the company will, on due surrender of this policy, and the dividends thereon, issue in lieu thereof (provided such surrender be made within three months of the date of such default, but not otherwise), a paid-up policy (payable as above), for an amount to be determined by the company, according to the method then in use by it in determining the paid-up value of its policies of this class; provided, however, that in case the said paid-up value shall not amount to one hundred dollars, the company reserves the right to pay a cash surrender value to be fixed by the company in lieu of issuing the paid-up policy.

An assignment of this policy, to be valid, must be made in duplicate; both must be sent to the company for acknowledgment, and due proof of interest produced with the proofs of death.

In witness whereof, the said New-York Life Insurance Company has, by its President and Actuary, signed and delivered this contract, this twenty-second day of November, one thousand eight hundred and seventy-five.

[Signed] MORRIS FRANKLIN,
President.

[Signed] WILLIAM H. BEERS,
645 *Vice-President and Actuary.*

Exhibit D.

Number 116,731. TONTINE INVESTMENT POLICY. Amount, $5,000

THE NEW-YORK LIFE INSURANCE COMPANY,

By this policy of insurance, in consideration of the statements and representations submitted to its officers at the Home Office in the City of New-York, and contained in the written application for this policy, and in the declaration thereto subjoined (all of which statements and representations have been and are hereby warranted by the applicant to be true, and are by the parties hereto referred to and made a part of this contract), upon the faith of which statements and representations this policy is issued, and of the sum of one hundred and two dollars and ninety cents, to them in hand paid, and of the annual premium of two hundred and five dollars and eighty cents, to be paid in like manner and sums, as per margin, in every year during the con-
646 tinuance of this policy, doth insure the life of James H. Bangs, manufacturer (hereinafter called the insured), of Pontiac, in the County of Oakland, State of Michigan, in the amount of five thousand dollars, for the term of his natural life, commencing on the twenty-second day of November, 1875, at noon.

And the said Company doth hereby promise and agree to pay the amount of the said insurance, at its office in the City of New-York, to the assured, under this policy, to wit: Edson C. Bangs, son of said James H. Bangs, or his legal representatives, in sixty days after due notice and satisfactory proof of the death, during the continuance of this policy, of the said person whose life is hereby insured as above, deducting therefrom all indebtedness to the Company, together with any balance of the year's premium remaining unpaid.

This policy is issued and accepted by the assured, upon the following express conditions and agreements:

1st. If the person whose life is hereby insured shall travel or reside beyond the settled limits or the protection of the Government of the United States (excepting in the settled limits of the Dominion of Canada, Prince Edward's Island or Newfoundland); or, between the first of July and
647 the first of November, south of a line beginning at the point of intersection of the northerly boundary of North Carolina with the Atlantic coast; thence running westerly along the said northerly boundary to a point one hundred miles from the coast; thence in a south-westerly direction, continuing one hundred miles from said coast to the thirty-fourth parallel of latitude; thence westerly along said parallel to the westerly border of Alabama (excepting the City of Atlanta and an area within a radius of fifty miles around it); thence northerly along the westerly border of Alabama, and along the Tennessee River to the northerly boundary of Tennessee; thence westerly along the northerly boundary of Tennessee and Arkansas, extended to the ninety-seventh degree of west longitude; thence southerly to the thirty-second parallel of north latitude; thence westerly along the said parallel to the Pacific Ocean; or shall enter upon a voyage upon the high seas (except as hereinafter specified); or shall be personally engaged in blasting, mining, submarine operations, or the production of highly inflammable or
648 explosive substances; or in working or managing a steam-engine in any capacity; or as mariner, engineer, fireman, conductor, express

messenger or laborer in any capacity upon service on any sea, sound, inlet, river, lake or railroad; or shall enter any military or naval service whatsoever (the militia, when not in actual service, excepted), without the consent of this Company in each or either of the foregoing cases, previously given in writing; or if he shall die in, or in consequence of a duel, or of the violation of the laws of any nation, State or province; or if his death shall be caused by the use of intoxicating drink or opium; or if any of the statements or representations herein above in the first paragraph of this policy referred to shall be found in any respect untrue, then, and in every such case, this policy shall be null and void.

2d. If the premiums, as above stipulated, shall not be paid on or before the days above mentioned for the payment thereof (allowance being made for the month of grace hereinafter mentioned), at the office of this company in the City of New-York (unless otherwise expressly agreed in writing), or to agents when they produce receipts signed by the president, vice-president or
649 actuary, then, and in every such case, this company shall not be liable for the payment of the sum assured, or any part thereof, and this policy shall cease and determine. While the said company, or its agents, may, at their option, give notice of the time of payment of said premiums, the giving of such notice shall be deemed an act of courtesy only, and shall not be deemed to establish a custom in relation thereto, or to be obligatory upon said company or its agents.

3d. In every case where this policy shall cease and determine, or become or be null and void, all payments thereon shall be forfeited to this company, and no action or right of action shall remain to, or be maintained against this company by the assured or by any other person, by virtue of this policy, or of anything connected therewith.

4th. Receipts for premiums are not valid unless signed by the president, vice-president or actuary.

5th. Agents of the company are not authorized to make, alter or discharge contracts, or waive forfeitures.

6th. Inasmuch as only the officers at the home office of the company, in the City of New-York, have authority to determine whether or not a
650 policy shall issue on any application, and as they act on the written statements and representations herein above referred to, it is expressly understood and agreed that no statements, representations or information made or given by or to the person soliciting or taking the application for this policy, or to any other person, shall be binding on the company, or in any manner affect its rights, unless such statements, representations or information be reduced to writing and presented to the officers of the company, at the home office, in the application referred to.

7th. The person whose life is hereby insured has permission to pass as passenger, by direct route, in first-class vessels, as follows: 1st—to and from Europe (travel and residence wherein is hereby permitted); 2d—to and from California, and along the coasts of Nova Scotia, New Brunswick, and the United States, between Cape Canso and the Rio Grande (provided no port is entered in which residence at the time of such entrance is prohibited; 3d—between ports on the East Pacific Coast, north of 32 deg. of north lati-
651 tude; 4th—between ports on the East Pacific Coast, north of 32 deg. of north latitude, and ports in the Sandwich Islands, China and Japan.

And further, this policy is issued, and accepted by the assured, on the following *special agreements* and conditions relative to policies on the Tontine Investment Policy plan:

1st. That this policy is issued on the Tontine Investment Policy plan.

2d. That the Tontine dividend period for this policy shall be completed

on the 22d day of November, in the year eighteen hundred and eighty-five.

3d. That no dividend shall be allowed or paid upon this policy unless the person whose life is hereby insured shall survive until the completion of its Tontine dividend period, and unless this policy shall then be in force.

4th. That all surplus or profits derived from such policies on the Tontine Investment Policy plan as shall cease to be in force before the completion of their respective Tontine dividend periods, shall be apportioned equitably among such policies, of the same class, as shall complete their Tontine dividend period in the same year.

5th. That after the completion of the Tontine dividend period, on the twenty-second day of November, 1885, provided this policy shall not
652 have been previously terminated by lapse or death, the accumulations apportioned to this policy shall secure to the assured one of the following benefits: First—to apply the accumulated dividend to the purchase of an annuity during the life of the insured, to be applied to the reduction of subsequent premiums on this policy, and in case the amount accruing in any year from the annuity, together with dividends that may thereafter be declared on this policy, shall exceed the amount of premium due thereon, the excess shall be paid in cash to said insured, or assigns. Second—to continue the assurance for the original amount and withdraw the accumulated dividend upon this policy in cash, payable to said insured, or assigns. Third—to withdraw the entire equity (*i. e.*—the accumulations that belong to this policy) in cash. Fourth—to convert the entire equity into its equivalent in a paid-up policy, without participation in profits; provided that should the amount of the paid-up policy exceed the original amount of the insurance, as a condition precedent to its issue, a satisfactory certificate of good health from an
653 examiner of the company, and subject to its approval, shall be furnished; and provided that this policy is duly surrendered within ninety days from the termination of the Tontine dividend period. Fifth—the conversion of the entire equity into an annuity to continue during the life of said insured. These benefits are at the option of the assured, but it is understood and agreed, that not less than three months prior to the termination of the Tontine period, the assured shall notify the company, in writing, which benefit is selected, and if no such notification is received, then, and in that case, the accumulated profits shall be converted into an annuity, to be applied to the reduction of such remaining premiums, under the conditions stipulated in the "first benefit" named above.

6th. That previous to the completion of its Tontine dividend period, this policy shall have no surrender value in cash, or in a paid-up policy.

7th. That in the payment of premiums upon this policy a grace shall be allowed of one month; provided, that in all cases when this grace is availed of, a fine at the rate of ten per cent. per annum shall be paid to the Company for the time deferred.

An assignment of this policy, to be valid, must be made in dupli-
654 cate; both must be sent to the Company for acknowledgment, and due proof of interest produced with the proofs of death.

In witness whereof, the said New-York Life Insurance Company has, by its President and Actuary, signed and delivered this contract, this twenty-second day of November, one thousand eight hundred and seventy-five.

[Signed] MORRIS FRANKLIN,
President.

[Signed] WM. H. BEERS,
Vice-President and Actuary.

UNITED STATES CIRCUIT COURT, FOR THE DISTRICT OF MINNESOTA.
TERM MINUTES, JUNE TERM, A. D. 1877.

June 18, 1877.

Present—Hon. SAMUEL F. MILLER,
Hon. RENSSELAER R. NELSON,
Judges.

EDSON C. BANGS,
vs.
THE NEW-YORK LIFE INSURANCE COMPANY.

And now comes the defendant, by Greenleaf Clark, Esq., one of its solicitors, on whose motion it is ordered that the defendant have leave to file a supplemental answer.

The defendant also made a motion for a continuance.

CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF MINNESOTA.

EDSON C. BANGS, by his Guardian *ad litem*, CUSHMAN K. DAVIS,
against
THE NEW-YORK LIFE INSURANCE COMPANY.

Now comes the defendant, by leave of the Court, and for supplemental answer in this action, respectfully states and shows:

That on or about the first day of July, 1876, this action was commenced in the District Court of the Second Judicial District of the State of Minnesota;
655 and that afterwards, and on or about the 8th day of July, 1876, upon the petition of the defendant, the same was removed into this Court at the next General Term thereof, pursuant to the statute in that behalf provided; and that at the December General Term of this Court for 1876, on the first day of said Term, the said defendant duly entered its appearance in this Court, and filed therein copies of the process against it and of all the pleadings and proceedings in said action, to which copies reference is hereby made; and that afterwards and on the 29th day of December, 1876, the defendant duly made, served and filed its answer to the complaint in said action, for the contents of which answer reference is hereby made thereto.

And by way of addition and supplement to said answer, the defendant alleges that on the 24th day of March, 1876, this defendant, then and still a corporation created by and existing under the laws of the State of New-York, and a citizen of the State of New-York, as complainant, duly filed in the
656 Circuit Court of the United States for the Eastern District of Michigan its bill of complaint against the said Edson C. Bangs, the plaintiff herein, and one Eliza E. Bangs, his mother, as defendants, both then citizens of the State of Michigan and inhabitants of said District, to have the two policies of insurance, set out in the complaint in this action, adjudged to be null and void and delivered up and canceled, and the said defendant restrained from instituting or carrying on any action at law upon the said policies.

That the said bill of complaint, after setting out the citizenship of the parties as aforesaid, alleged, among other things, the making of written applications

to this defendant for the two policies of insurance aforesaid by James H. Bangs in behalf of himself and Edson C. Bangs, and set out in full the said written applications; which said applications so set out are the same applications pleaded in the answer in this action, and copies of which are annexed to and made part thereof.

That the said written applications were forwarded to this defendant at New-York, and that said defendant relying upon the same and the matters and things therein contained made and issued two policies of insurance,
657 therein fully set out, and which are the same identical policies set out in the complaint in this action; and that said policies were both delivered to the said James H. Bangs, the party assured thereby, on the 2d day of December, 1875; that shortly after the delivery of said policies and on the 5th day of December, 1875, the said James H. Bangs died from the effects of poison voluntarily taken by him for the purpose of producing, and which in fact resulted in, his death; that the said James H. Bangs at the time he applied for and obtained said policies of insurance intended to effect his own death within a short time thereafter, and thereby to defraud the said insurance company out of the amounts of said policies, and that the said Eliza E. and Edson C. were endeavoring to conceal the means and manner of the said death and to suppress the evidence thereof, and to prevent examination into the same, and that the death of said James H. Bangs was accomplished in pursuance of such fraudulent design.

And the said Bill prayed the judgment and decree of the court, among other things that the said policies of insurance should be declared null and void by reason of said matters; that the defendant, Edson C. Bangs, should
658 be directed to deliver up the same to be canceled, and that the said Edson C. and Eliza E. should be restrained from instituting or carrying on any action at law against said insurance company upon the said policies of insurance, or either of them.

The said Bill of Complaint also contained the usual prayer that the said defendants therein answer the said Bill of Complaint, the usual prayer for process, and the usual prayer for general relief.

The defendant further shows that upon the filing of said Bill and upon the same day a subpœna was duly issued out of said court and under the seal thereof in said suit, in the usual form, directed to the said defendants therein commanding them to be and appear in said court on the first Monday of May then next ensuing, at the District Court-room in the City of Detroit, then and there to answer unto the said Bill, which said subpœna was afterwards and on or about the day last aforesaid duly served upon said defendants and each of them, and thereafter and on or about the fifteenth day of June, 1876, the said Edson C. Bangs, being a minor then of the age of about fifteen years,
659 Henry A. Harmon, Esquire, a solicitor of said court, was duly appointed by an order of said court, then duly made and entered, guardian *ad litem* in said cause of said Edson C. Bangs, to defend the same in his behalf, and afterwards and on or about the 25th day of the same June the said Edson C., by his said guardian *ad litem*, duly made and filed his answer in said suit, wherein and whereby, among other things, he did admit the making of the said written applications for said policies of insurance and the issuing and delivery of said policies as aforesaid and the death of the said James H. Bangs, but denied that his death was caused by the taking of poison, and averred that he died from natural causes, and denied that the said James H. Bangs at the time he applied for and obtained said policies of insurance intended to effect his own death, and denied that said policies were obtained for the purpose of defrauding said company, and denied that said death was effected in pursuance of any such fraudulent design, and denied that the said defendants were endeavoring to conceal the means or manner of said death or

to suppress the evidence relating thereto, or to prevent examination in
660 regard to the same, and denied all the allegations of fraud in said Bill, and denied the said policies were tainted with fraud, and averred that they were valid and binding on said company; and said Edson C., being a minor as aforesaid, did by said answer submit his rights and interests to the protection of the said court. And afterwards and on the 27th day of June, 1876, the said complainant duly made and filed its general replication to said answer.

That the said Eliza E. Bangs did not appear or cause her appearance in said suit to be entered, but made default therein, and after due time for her to appear and defend the said suit had elapsed an order was duly made and entered in said suit by said Court taking the said Bill of Complaint as confessed as to her.

And after the joining of the said issues in said suit as aforesaid between the said complainant and the said Edson C. Bangs, the proofs touching the said issues and the matters in said bill were duly taken and published, and the said cause was thereupon duly set down for hearing at a General Term of said court, holden at Detroit, in said Eastern District of Michigan,
661 and was duly heard by said court upon the said pleadings and proofs, and afterwards at said General Term of said Court, to wit: on or about the first day of June, 1877, in consideration of said pleadings and proofs, judgment was duly made and entered in said suit by and in said Court, whereby it was adjudged and decreed that the said two policies of life insurance were obtained by the said James H. Bangs, with the intent on his part and that of the said defendants that he should commit suicide, and that the said James H. Bangs did, shortly after obtaining said policies of insurance, commit suicide, and that the said complainant was thereby defrauded; and it was further ordered, adjudged, and decreed that the said two policies of insurance, being the same identical policies of insurance set out in the complaint in this action were, and the same were thereby declared to be null and void, and the said Edson C. Bangs was thereby directed to deliver up the said policies of insurance to be canceled; and it was further ordered, adjudged, and decreed that the said defendants, Edson C.
662 Bangs and Eliza E. Bangs, be perpetually enjoined from instituting and carrying on any action at law against the said complainant, this defendant, upon the said policies of insurance, or otherwise seeking to compel the said complainant to pay any sum or sums of money by reason of said policies of insurance, and that the said defendants pay to the said complainant the costs of said suit, to be taxed, and that the said complainant have execution therefor, which said decree is of record in said court, and is in full force and unappealed from. An exemplification of the record in said suit is herewith filed and made a part hereof.

And this defendant avers that the said suit and judgment embraced and adjudicated the same identical subject matter that is involved in this action, and that the same are a bar to this action.

Wherefore this defendant prays judgment that the plaintiff take nothing by this action and for its costs and disbursements thereof.

BIGELOW, FLANDRAU & CLARK,
Defendants' Attorneys.

District of Minnesota, ss:

Greenleaf Clark came before me personally, and being duly sworn, doth say that he is one of the defendant's attorneys in the above entitled action;
663 that the foregoing supplemental answer is true to the best of his knowledge, information and belief, and that the reason why this verification

is not made by one of the officers of said defendant is, that said defendant and all of its officers are absent from the District of Minnesota, where reside its said attorneys.

GREENLEAF CLARK.

Subscribed and sworn to before me, on this 18th day of June, A. D. 1877

[Notarial Seal.] GEO. C. SQUIRES,
Notary Public,
Ramsey County, Minnesota.

Exemplification of Record referred to in Supplemental Answer.

UNITED STATES OF AMERICA.

To the Honorable the Judges of the Circuit Court of the United States for the Eastern District of Michigan, sitting in Equity.

The New-York Life Insurance Company, a corporation organized and existing under the laws of the State of New-York, and a citizen of the State of New-York, bring this their bill against Edson C. Bangs, of the city of
664 Pontiac, in the State and Eastern District of Michigan, and who is a citizen of the State of Michigan, and Eliza E. Bangs, of the said city of Pontiac, and who is also a citizen of the State of Michigan, and thereupon your orators complain and say:

First. That they are a body corporate duly constituted as such under the laws of the State of New-York, by the name aforesaid, and having their principal offices and residing in the City of New-York, in the State and Southern District of New-York.

Second. That on or about the 27th day of October, A. D. 1875, one James H. Bangs, then a resident of the City of Pontiac, in the State and Eastern District of Michigan, now as your orators are informed and believe, deceased, acting both for himself and on the behalf of said Edson C. Bangs, made an application in writing in the ordinary form to your orators, wherein they said James H. Bangs and Edson C. Bangs set forth certain statements and representations touching the then past and present state of health and habits of life of said James H. Bangs, and requested your orators to insure the life
665 of said James H. Bangs, for the benefit of said Edson C. Bangs, in the sum of five thousand dollars, according to and upon the table named in the said application, a copy of which written application is hereto attached and referred to as a part hereof, and marked "Exhibit A."

Third. That afterwards and on or about the sixth day of November, 1875, said James H. Bangs acting as aforesaid both for himself and for said Edson C. Bangs made in like manner another application to your orators wherein like statements and representations touching the then past and present state of health and habits of life of said James H. Bangs, were made and wherein also your orators were likewise requested to insure the life of said James H. Bangs for the benefit of said Edson C. Bangs in the further sum of five

thousand dollars according to and upon the table therein named. A copy of which said second written application is hereunto attached and referred to as a part hereof, and marked "Exhibit B."

Fourth. That the said written applications were made and delivered to one Daniel Hubbell then acting as agent to receive and forward to
666 your orators applications of the character aforesaid in the said city of Pontiac. That the said written applications were forwarded to your orators and on or about the 22d day of November, 1875, were received by them at their offices in the said City of New York. That in and by the said written applications said James H. Bangs was represented to be in good health and not subject or prediposed to any disease or bodily infirmity; and that he had not been afflicted since childhood with fits or convulsions, dropsy, paralysis, apoplexy, palpitation or disease of the heart or any other disease likely to cause death in the manner in which said James H. Bangs is hereinafter alleged to have subsequently died.

Fifth. That afterwards and on or about the 22d day of November, A. D. 1875, your orators acting in reliance upon the truth and correctness of the said statements and representations, and upon the declaration therein made, that in the said application or proposal no material circumstance or in-
667 formation touching the then past or present state of health of said James H. Bangs, with which your orators ought to be made acquainted had been withheld, and relying also upon the honesty and good faith of said James H. Bangs and Edson C. Bangs, in making the said applications, did consent to insure the life of said James H. Bangs, for the said sums of five thousand dollars and five thousand dollars; and thereupon made and issued to the said James H. and Edson C. Bangs, a policy of insurance duly written and signed by your orators through their proper officers, whereby in consideration of the sum of one hundred and two dollars and ninety cents, to them in hand paid, and of the annual premium of two hundred and five dollars and eighty cents to be paid in semi-annual installments of one hundred and two dollars and ninety cents, on the 22d days of May and November, in each and every year thereafter, as therein expressed, your orators agreed and undertook to insure the life of said James H. Bangs in the said sum of
668 five thousand dollars for and during his natural life, and did promise and agree to pay to the said Edson C. Bangs, represented in said applications to be the son of said James H. Bangs, the said sum of five thousand dollars in sixty days after due notice and satisfactory proof of the death during the continuance of said policy of the said person whose life was thereby insured, all which will more fully appear by reference to a copy of said policy of insurance, which is hereto attached, and made a part hereof and marked "Exhibit C."

That at the same time, viz: Upon the date last aforesaid, your orators acting in like manner upon the said second written application made and issued to said James H. and Edson C. Bangs, a second policy of insurance duly written and signed in manner aforesaid, whereby in consideration of one hundred and two dollars and ninety cents, to them in hand paid, and of the annual premium of two hundred and five dollars and eighty cents, to be paid in semi-annual installments of one hundred and two dollars and ninety cents each on the 22d days of May and November, in each and every year
669 thereafter, as therein provided. Your orators agreed and undertook to insure the life of said James H. Bangs in the said further sum of five thousand dollars for the term of his natural life, and did promise and agree to pay to the said Edson C. Bangs the aforesaid sum of five thousand dollars, in sixty days after due notice and satisfactory proof of the death during the continu-

ance of said policy of the said person whose life was thereby insured. A copy of which said policy last named is hereto attached, and marked "Exhibit D."

Sixth. That the said policies of insurance were thereupon forwarded by your orators to be delivered to the said James H. Bangs, and that they afterwards, and as your orators are informed and believe, on the 2d day of December, 1875, were delivered to the said James H. Bangs.

Seventh. That the sums named in the said policies as first premiums and designated as paid upon the issuing of said policies were not in fact paid, but that in lieu of such payment said James H. Bangs made and gave to
670 your orators his individual promissory note for the sum of two hundred and five dollars and eighty cents, to become due and payable in twenty days from the date thereof, said note bearing date the 16th day of November aforesaid, and falling due on the 6th day of December next following, the same being the day next following the night upon which said Bangs died, as hereinafter stated; which said note is now in possession of your orators, and ready to be produced and proved.

Eighth. That shortly after the delivery of said policies and on the 5th day of December, 1875, between the hours of eleven and twelve at night, the said James H. Bangs died, as your orators are informed, in a very sudden and mysterious manner. That your orators are not personally cognizant of the facts and circumstances attending the said death, and they know the same only from common report and from the testimony of witnesses examined in subsequent proceedings hereinafter referred to and from newspaper
671 paragraphs, some of which are attached hereto and referred to and marked "Exhibit E," but they show that the same were substantially as follows: Upon the day last aforesaid, James H. Bangs was in excellent health and was strong and robust; that he continued so to be up to the usual hour of the evening for retiring, when the defendant Eliza E. Bangs, then occupying the relation of wife to the deceased retired for the night leaving him alone, he saying that he would remain up to do some writing, at about half past eleven of the same evening he was heard to fall upon the floor by the defendant Eliza E. Bangs, who thereupon summoned a neighbor to go to him, but did not herself go to the room wherein he was left to help or attend upon him; within a few minutes after being summoned as aforesaid the said neighbor, one Joseph Williamson, named in "Exhibit G," hereof, reached the side of the deceased and found him lying on the floor in convulsions or spasms which continued intermittingly with greater or less violence for ten or fifteen minutes thereafter when death ensued. That said Williamson was alone with deceased from the time of his arrival till said death occurred; that he, said Williamson, sent for a
672 physician and caused to be summoned Dr. Chauncey Earl named in said "Exhibit G"; but he said Earl, did not arrive until after deceased was dead. Your orators show that the condition and symptoms of the deceased before and at the time of said death and the manner of said death and the indications thereafter as the same are all set forth herein, and in the exhibits hereto show unmistakably that the deceased died from the effects of poison taken on the evening of his death; when asked by said Williamson upon the arrival of the latter at his side whether a doctor should be summoned, the deceased replied, "No, it is of no use, I am dying. You can do so if you want to." And when asked if he had ever been troubled with anything of the kind before, replied, "No, I am dying." That no writing material was to be found in or about the room to indicate

that the deceased had been using the same, although search was promptly made for that purpose. That the mind and consciousness of the deceased remained clear up to the time of his death. That as your orators are informed and believe the defendant Eliza E. Bangs did not go into the room when her alleged husband lay dying as afore-
673 said, to assist him or inquire into his condition or the cause of his illness, but absented herself therefrom, and did not go near to, or look at his remains, or express any wish to do so, until long after he was dead, if at all, all which will more fully and at large appear by reference to the depositions taken before the Justice of the Peace hereinafter named, true copies of which are contained in Exhibit "G," hereof.

Ninth. Your orators are informed and believe that on the 7th day of December, 1875, an inquisition was held upon the body of said James H. Bangs before a coroner and a jury empaneled for that purpose in the said City of Pontiac, in the cause of which inquisition evidence was taken relative to some of the facts and circumstances attending the death of said deceased. That the said inquisition and evidence therein have not been returned to the Circuit Court for the said County of Oakland, and your orators are
674 unable to set forth the same herein with particularity; but they are informed and believe that the evidence so taken did not show from what cause the deceased came to his death, nor whether such death was or was not caused by poison, and that the said coroner's jury thereupon returned the verdict, a copy of which is set forth in Exhibit "E," hereof.

Tenth. That upon being advised of the said death, your orators' agent at Chicago immediately repaired to the said City of Pontiac, reaching there on the evening of the 7th day of December, after the said inquest had been held, and upon learning the aforesaid suspicious circumstances attending said death, he, on the evening last aforesaid visited the said Eliza E. Bangs, who then had the control and custody of the unburied remains of said deceased, and also the care and custody of the defendant, Edson C. Bangs, and requested her on behalf of your orators and in view of the large amounts of insurance aforesaid, to have a post-mortem examination of the said remains, made by some competent medical expert, or to consent that such an examination
675 be made; but that she utterly refused to make the same, or consent that it be made, and together with her legal advisers and others, planned and took active measures to prevent the making of such an examination as your orators are informed and believe.

Eleventh. That afterwards and on the 14th day of December, 1875, a complaint was made in writing and on oath before one of the Justices of the Peace of the County of Oakland, the same being the county in which the said city of Pontiac is situated, setting forth that said James H. Bangs had died and was buried in said city of Pontiac, and that the person making such complaint had good reason to believe that the said deceased person came to his death by means of poison. That the said justice of the peace acting under the statutes of the said State of Michigan in such case made and provided thereupon proceeded to examine the person making such complaint and other witnesses brought before him for that purpose, and after making such examination and reducing to writing the testimony taken thereupon, the said justice of the peace in pursuance of said statutes issued a process
676 directed to the sheriff of said county, directing him to disinter the body of said James H. Bangs and remove the same to a suitable and convenient place for the purpose of holding an inquest and a post-mortem examination thereupon. That the said process was on the next day there-

after delivered to the said sheriff who omitted to execute the same until enjoined as hereinafter stated. A true copy of said complaint, testimony and process is hereunto attached and made a part hereof and marked "Exhibit G."

Twelfth. That on the fifteenth day of December aforesaid, the said Eliza E. Bangs filed a bill of complaint in the Circuit Court for the County of Oakland, in Chancery, wherein Charles E. Adams, the person who made the aforesaid complaint, John H. Dresser, the said justice of the peace before whom said complaint was made, Edwin S. Harger, the said sheriff, and Frank Galbraith, one of the persons examined before said justice of the peace, were named as defendants, and procured an injunction to be issued
677 from the said Circuit Court for the County of Oakland, forbidding, amongst other things, the said sheriff from executing the said process. The said Eliza E. Bangs alleging in her said bill that the proceedings wherein said process was issued were not instituted by any public prosecutor with a view to detect or punish crime, but that the same were instituted and would be carried on for the purpose of discovering evidence to be used as a defense against the said policies of insurance, all which will more fully appear by reference to the said bill now on file in said last named court, and to which or to a certified copy thereof your orators ask leave to refer.

Thirteenth. That the defendants to said last named bill made and filed an answer thereunto, alleging amongst other things, that the said Eliza E. Bangs had no title to maintain said bill, and that the said proceedings were regular and proper and that the said process should be executed;
678 and they thereupon moved to dissolve the said injunction; that the said motion to dissolve was strenuously resisted by the parties who are defendants herein, and that on or about the day of January, 1876, the said court last named denied the said motion and ordered that the said injunction be retained until the final hearing of said cause; that the said cause is still pending and undetermined.

Fourteenth. That the said last mentioned court delivered no written opinion in deciding said motion, and your orators have been unable to learn upon what legal or equitable ground the said injunction was retained as aforesaid; but whether the decision of the said court in that regard be upon good grounds and sustainable or not, the same practically nullifies the statute under which said proceedings were taken and by which the Legislature of the State of Michigan have sought to provide a means for ascertaining the cause of death in such cases and places within the control of the defendants the best evidence as to the cause of the said death and enables them to effect the destruction of the same, inasmuch as the traces of poison which constitute the said evidence would have disappeared before the defendants to the
679 said injunction bill could secure a hearing of their said cause before the court of last resort in said State of Michigan.

Fifteenth. Your orators now here show upon information and belief, and they therefore charge the fact to be, that all the acts and doings aforesaid, both of the said James H. Bangs, deceased, and of the defendants hereto, had been done in pursuance and furtherance of a purpose wrongfully to defraud and cheat your orators and thereby unjustly and unlawfully to obtain from your orators a large sum of money; that the said James H. Bangs, at the time he applied for and obtained said policies of insurance, intended to effect his own death within a short time thereafter, either by direct suicide or with the assistance of others; that although in perfect health and not subject to such

attacks, he was very soon after the delivery of said policies to him taken with a severe fit of vomiting which indicated that an overdose of poison had been taken; that during the evening of the said fifth day of December, the same
680 being the day upon which he died, the said James H. Bangs spent a considerable time in a drug store in the said city of Pontiac behind the prescription desk making an examination of a book in which the character and effects of different drugs were described, kept and used in said drug store as a medical dispensatory; that during a considerable portion of the time he so spent there he was unobserved by any one and had access to the drugs that were there kept; that previous to making the said applications to your orators the said Bangs had consulted with agents of other life insurance companies upon the subject of insuring his life in such other companies, but that upon finding that the policies issued by each of such other companies contained what is known as the suicide clause, viz: a provision avoiding such policy of insurance in case the insured should die by his own hand, declined to insure his life in such other companies, because their policies
681 contained the said suicide clause; that he thereupon sought to find a life insurance company whose policies did not contain such clause, and found that such clause was not contained in the policies issued by your orators. That your orators then had no agent to receive applications for insurance at the said city of Pontiac, and that said James H. Bangs thereupon procured the said Daniel Hubbell to apply for and obtain the local agency there from your orators for the purpose of receiving the said application, which said agency was so obtained just previous to the making of the said applications. That the death of said Bangs in the manner and under the circumstances hereinbefore and hereinafter set forth, was effected in furtherance of the said fraudulent purpose by means of poison administered either by the said deceased himself or by some other person cognizant of and a party to the said fraudulent purpose. That at the time when said policies were applied for and taken from your orators, the said deceased had no property, and was utterly unable to pay for and carry the said in-
682 surance obtained from your orators; that he had then recently been thrown out of the business partnership or arrangement in which he had been engaged during the time he had resided in said city of Pontiac, and was utterly without means, business or prospects by which he might hope to be able to pay the premiums provided for in said policies, and that at the same time he procured still other insurance than that above mentioned, in the further sum of twenty-five hundred dollars.

Sixteenth. Your orators are informed and believe that after the death of said deceased, the defendant, Eliza E. Bangs, in anticipation of efforts to be made by your orators and others to ascertain the cause of said death, which efforts might reasonably be expected as soon as all the suspicious circumstances aforesaid should become known immediately took steps to prevent the investigation and discovery by any one of the said cause of death; that upon the day following said death she placed herself and the defendant, Edson C. Bangs, in the hands of attorneys, turning over to
683 such attorneys all papers and matters pertaining to the said insurance, and making a bargain or arrangement with such attorneys by which they were to undertake to compel your orators to pay the sum of money named in said policies, and for such purpose to employ every means in their power, if necessary, to prevent the making of an efficient investigation into the cause of said death, and especially to prevent the holding of a post-mortem examination upon the body of said deceased; that the said coroner's inquest was, in fact, instituted and held at the instance, either directly or indirectly, of said defendants and their attorneys or agents for the purpose of

forestalling and preventing the holding of a more efficient inquest, and was by them intended, as it has proved in fact to have been, a means of concealing rather than of discovering, the truth relative to the cause of said death, that your orators had no opportunity of sending an attorney or agent to
684 attend said inquest on their behalf; that no officer or other person attended said inquest on behalf of the public save the said coroner himself; that the said attorneys for the defendants or one of them had advised with said coroner before said inquest took place relative to holding such inquest, and that one or more of them attended the holding of the same, and gave directions in reference to or otherwise influenced the proceedings at said inquest; that the said coroner acted honestly but inefficiently; that some of the jurors upon said inquest expressed a desire to have a post-mortem examination made, but were told that they could not have such examination, or were otherwise put off from insisting upon the same; that one of said jurors afterwards stated that, had the testimony which was given by said Dr. Earl before said justice of the peace as aforesaid been adduced when said Dr. Earl was examined at said inquest, the said coroner's jury could not have found as they did in their verdict, that the said deceased came to his death by the act of God; that the said Dr. Earl was the only medical witness examined upon
685 said inquest; that the said jurors have commonly expressed dissatisfaction with the said inquest, and your orators submit, in view of the evidence taken before said justice of the peace as aforesaid, that the said inquest was a mere form, and was wholly useless save as a means of effecting the defendants' aforesaid purpose to prevent a more efficient inquest, and that a post-mortem examination should have been ordered by said coroner.

Seventeenth. That the defendant, Eliza E. Bangs, exercises control over and claims to own the land wherein the remains of said deceased are interred; and that she has hitherto refused, and still does refuse, to permit any person whatsoever to disinter and hold a *post-mortem* examination upon said remains for the purpose of ascertaining the cause of said death. That your orators have repeatedly requested her to consent that such examination be made, which requests have been uniformly refused. That on the 24th day of February, 1876, your orators presented to her and to the defendant, Edson
686 C. Bangs, and to the guardian of said Edson C. Bangs, a communication in writing requesting them to consent that a *post-mortem* examination of the body and a chemical analysis of the stomach of said James H. Bangs deceased, be made by Dr. Chandler, of New-York, or by Dr. S. H. Douglass, of the Michigan University, or by some other competent medical expert, in which communication your orators also offered that if upon such examination and analysis being made no poison should be found your orators would pay the said policies without further question. A true copy of which written communication is hereunto annexed and marked "Exhibit H," and referred to as a part hereof; that the same was attached to and presented to the defendants together with the notice hereinafter referred to as "Exhibit I" hereof. That the defendants have disregarded the said request and made no answer thereto save as hereinafter stated. That on the 29th day of February your orators applied to the said guardian of said Edson C. Bangs, viz: one John M.
687 Smith, the said Edson C. Bangs being a minor, to ascertain whether or not the said request would be granted, but that they were able to obtain from him, said guardian, only evasive and disingenuous answers; that said guardian stated, however, in effect that the defendant, Eliza E. Bangs, had determined not to accede to said request, and that he, said guardian, was not prepared to give his consent to said request, whereupon your orators urged upon him the fairness of said request, and offered and asked him to send them a full and definite answer thereto, during the then present week. That your orators have since received no further or other reply to their said request.

Eighteenth. That the said Edson C. Bangs is, as your orators are informed, a minor, of about the age of sixteen years, and is said to be the son of the deceased and of the defendant, Eliza E. Bangs. That he is living with said defendant and is in her custo y and control; that said John M. Smith is acting as the general guardian of said Edson C. Bangs.

Nineteenth. That none of the facts and circumstances herein alleged indicating fraud as aforesaid on the part of the defendants and said James
688 H. Bangs, were known to your orators until after the death of said James H. Bangs; that since the said death your orators have diligently sought to ascertain the truth relative to the matters aforesaid and upon becoming satisfied that the facts are as herein alleged, your orators gave to the defendants the notice of which "Exhibit I" hereof is a copy, and made the offer therein contained to rescind the said contract of insurance and to surrender up and restore the said promissory note, the same being the only consideration or value received by them in consequence of said contract; that at the time said policies were issued by your orators the only information or knowledge possessed by them in any way relating to the risk which they were requested to assume by issuing the said policies of insurance consisted of the statements, representations and warranties contained in the said written applications.

Twentieth. Your orators show that they have been unconscionably defrauded in the premises and that the defendants are both and each of
689 them directly or indirectly parties to and answerable for the matters of fraud and collusions herein complained of. That in applying for and obtaining said policies of insurance the said James H. Bangs was held out and represented to your orators to be a person sound in health, correct in habits and with every prospect of a long life. That he was held out and represented to be a person who fully intended to live as long as he should be able to live in the natural course of events, and who had no intention either actively or passively to hasten his own death, which said representations were as your orators charge false and fraudulent and tended to mislead your orators amongst other things in this that he, said James H. Bangs at the time of ayplying for and obtaining said policies, did in fact intend to effect in some way his own death shortly after he should obtain the said policies of insurance; that the concealment of the said last mentioned intent from your orators and the false representations aforesaid constituted a palpable and gross
690 fraud upon your orators. That the life of said James H. Bangs was represented to be a valuable one, both to himself and to the defendant for whose benefit said insurance was taken. That your orators in issuing said policies relied implicitly upon all the aforesaid representations expressed and implied, and believed that the said deceased had no intention of shortening his life. That if they had known of the existence of such an intent they would not have consented to issue said policies, of all which the defendants and said James H. Bangs were well aware. That in the contract of insurance to which your orators actually consented in issuing said policies your orators did not agree to hire the said James H. Bangs to commit suicide. That the defendants have by means of their aforesaid devices succeeded in suppressing the most important evidence relative to the cause of said death and that unless this honorable court shall compel the production and discovery of said evidence the said defendants will secure the entire
691 destruction of the same, if in fact the same has not already been destroyed by the disappearance of the traces of poison aforesaid. That the said policies of insurance are tainted with the said fraud, and should be declared null and void by reason of the premises, and that they should be

surrendered up to be canceled upon your orators surrendering up the said notes in accordance with their said offer to rescind. Your orators therefore pray as follows:

First. That the defendants may answer this bill, but not on oath, their answer under oath being hereby waived, and that they may be compelled to discover and produce all evidence of whatsoever kind or nature the same may be, which is in their possession or under their control, touching the cause of death of the said Bangs, deceased, and to this end that the defendants may be required to submit the remains of the said deceased to an examination and chemical analysis, to be made by a competent medical expert, to
692 be appointed by this Court for the purpose of determining whether there still are traces of poison in the stomach of said deceased, or else that the Court, in view of your orators' said reasonable request and fair offer, and of the defendants refusal of the same, and of their, said defendants', persistent and determined efforts to conceal the cause of the said death, may presume for the purposes of this case, that said death was caused by poison.

Second. That the said policies of insurance may be declared null and void by reason of the premises; that the defendant, Edson C. Bangs, be directed to deliver up the same to be canceled, your orators hereby offering to surrender up and return any and every thing received by them as a consideration for their said contract of insurance.

Third. And that the said Edson C. Bangs and Eliza E. Bangs, their counselors, attorneys, solicitors, officers or agents, may be restrained by an injunction issuing out of this Court from instituting or carrying on any
693 action at law against your orators upon the said policies of insurance, or either of them, or otherwise seeking to compel your orators to pay any sum or sums of money by reason of their said undertaking to insure the life of said James H. Bangs, deceased.

Fourth. And that your orators may have such further and such other relief as to the Court may seem meet.

May it please your Honors to grant unto your orators, not only the writ of injunction, issuing out of and under the seal of this Court, directed to the said Edson C. Bangs and Eliza E. Bangs, their counselors, attorneys, solicitors and agents, thereby commanding them, and each of them, absolutely to desist and refrain from instituting, or bringing, or carrying on any action at law against your orators upon the aforesaid policies of insurance, or upon either of them, and from otherwise seeking to compel your orators to pay any sum or sums of money by reason of their said agreement or undertaking to insure the said life of said James H. Bangs, deceased, but also the writ of subpœna, issuing out of and under the seal of this honorable Court, to be directed
694 to the said Eliza E. Bangs and Edson C. Bangs, commanding them by a certain day and under a certain penalty therein to be inserted, to be and appear before this honorable Court and then and there to answer the premises, and further, to stand to and abide such order and decree therein as shall be agreeable to equity. And your orators shall ever pray, etc.

THE NEW-YORK LIFE INS. CO.,
By HERBERT L. BAKER,
Their Attorney in fact.

HERBERT L. BAKER.
Solicitor and of Counsel for Complainant.

UNITED STATES OF AMERICA,
Eastern District of Michigan, ss:

On this 24th day of March, A. D. 1876, before me personally appeared the above named Herbert L. Baker, who subscribed the foregoing bill on behalf of the complainants, and made oath that he has read the said bill and knows the contents thereof, and that the same is true of his own knowledge, except the matters which are therein stated on information and belief, and as to those matters he believes it to be true.

ADDISON MANDELL,
Commissioner Circuit Court U. S.,
Eastern District, Michigan.

695 Let an injunction issue in accordance with the prayer of the within bill.

H. H. EMMONS,
Circuit Judge.

UNITED STATES OF AMERICA,
Eastern District of Michigan, ss:

Herbert L. Baker, being duly sworn, deposes and says: that he is the attorney for the New-York Life Insurance Company, named in the foregoing bill, duly appointed as required by law to represent them in the State of Michigan, and as such officer he is authorized to bring the foregoing bill on their behalf, and affix their signature thereto.

HERBERT L. BAKER.

Subscribed and sworn to before me this 31st day of March, A. D. 1876.

A. MANDELL,
Commissioner of Circuit Court U. S.,
Eastern District of Michigan.

SUDDEN AND MYSTERIOUS DEATH.

Our city was considerably agitated on Monday morning, at the news that Mr. James H. Bangs, of the firm of G. A. Hall & Co., millers of this city, had suddenly and very unexpectedly died.

Events have subsequently come to light that would tend to enshroud the melancholy affair as one of a mysterious nature, so much so, that it was thought advisable to hold a coroner's inquest. Accordingly Coroner George P. Hungerford had empaneled a jury, and Messrs. J. Williams, Dr. C. Earl, Mrs. Kitridge, John M. Smith, A. C. High, L. W. Simmons, F. S.
696 Stewart, and Daniel Hubbell were summoned as witnesses. The inquest was held at his late residence, on Thursday morning, and the facts there elicited may be briefly summed up as follows: The deceased was about 48 years of age; he came to Pontiac in May last, entering into a co-partnership with Mr. G. A. Hall, in the White Rose Flouring Mill. On the evening of Sunday last, he appeared in his usual good health, and during the

evening had been reading. At the usual time for retiring, he told Mrs. B. to go to bed, he had some writing to do and would shortly follow.

About half-past eleven, Mrs. B. heard a noise as one having fallen, followed by a groan; she at once arose, summoned Mrs. Kitridge, living in another part of the house, and then in her night clothes went to arouse Mr. J. Williams, a neighbor living close by, when she returned to Mrs. Kitridge's apartments where she remained.

Mr. Williams thinks it was about half-past eleven when he reached the side of the dying man. He found him perfectly conscious and able to articulate freely. He asked him what was the matter, and he replied that he was dying. He asked if the difficulty was in the head, and whether he should send for a doctor. He replied that it was of no use as he was dying,
697 but could send for a doctor if he thought it desirable. A messenger was dispatched for a physician, but he died in convulsions before the doctor arrived. Not over one-half an hour had elapsed from the time he was first attacked until he breathed his last. Very soon after Dr. Earl came in, but the man being already dead could not discover anything by which to form an opinion as to the probable cause of his death, and so stated before the inquest.

A verdict by the jury was rendered in accordance with the above facts, and is as follows:

STATE OF MICHIGAN,
County of Oakland, ss:

An inquisition taken at the residence on Saginaw avenue, in the City of Pontiac, in said county, on the 7th day of December, A. D. 1875, before me, George P. Hungerford, one of the coroners of the said county, upon the view of the body of James H. Bangs, there lying dead, by the oaths of the jurors, whose names are hereto subscribed, who being sworn to inquire in behalf of the people of this State, when, in what manner and by what means the said James H. Bangs came to his death, upon their oaths do say that the
698 said James H. Bangs died at his residence aforesaid on the night of the 5th of December, between eleven and twelve o'clock P. M., 1875; that he had no marks of violence appearing on his body, and died by the visitation of God, in a natural way and not otherwise.

In witness whereof we have hereunto set our hands.

GEORGE P. HUNGERFORD,
Coroner.

THADDEUS A. SMITH,
THOMAS MABLEY,
GEORGE W. CURTIS,
JOSEPH H. VOORHEIS,
JARVIS J. GREEN,
C. WESLY HORTON,
Jurors.

There are circumstances by which this melancholy affair is surrounded that, considered by themselves, would not necessarily attract attention, but when coupled with the sudden and mysterious death of the deceased, it seems incumbent upon us to state the facts just as they are, and leave the public to draw its own inferences.

In regard to the insurance of $12,500 on the life of the deceased, we have

been careful in eliciting the following facts: In the month of September he proposed to Mr. D. Hubbell, of this city, to take out a policy of life insurance to the amount of $10,500. Mr. Hubbell was not at that time agent for life insurance, but was about to take an agency for the Mutual of New-York, and obtained blank applications from the General Agent of Michigan, at Detroit, together with the form of its policies.

Upon taking Mr. Bangs' application he objected to a certain clause in the policy relating to the "dying by the hand of justice, insurrection or
699 suicide." He then obtained applications from Mr. Fox of Grand Rapids, state agent for the Mutual Benefit of New Jersey, also form of its policies which Mr. Bangs discarded for the same reason. Mr. Bangs then propoed that if Mr. Hubbell would take an agency for the New-York Life he would take out a policy in that as he was acquainted with its forms of policies and liked them better. Accordingly, the agency was solicited and obtained and the deceased took out two applications of $5,000 each, one on the whole life plan and the other in ten-year Tontine premium payable semi-annually. He gave in payment for premium two notes of $205.80 each, one payable in twenty days and the other in six months, dated November 16th, 1875. These applications were forwarded to the home office and the policies were returned and delivered on the 29th of November. While the form of policies above noted were being submitted and before the applications had been taken a special agent for the Continental of New-York came and took his application for $2,500 more. The premiums were made payable semi-annually, he giving his note for ninety days for the first payment. Being cognizant of the latter transactions, Mr. Hubbell had abandoned the second
700 application thinking he would not care for any more than the $5,000 insurance in the New-York Life. Accordingly, one application was filled out and Mr. Bangs signed it and went before Dr. F. B. Galbraith, medical examiner, who filled out the certificate on the application. Mr. Bangs then said to Mr. Hubbell, "You have got but one application, where is the other?" Mr. H. replied that having known of his taking $2,500 in the Continental, he supposed he had got all he cared to carry to which he replied, "It being only $2,500 more than the amount first talked of, I think I can get along with it." Whereupon Mr. H. immediately went to his office, got another application, filled it out and the deceased signed it. The medical examiner filled out his report by simply copying the first application. The applications were then forwarded and the policies returned as before stated. Before, however, the policies were delivered, the company, in view of the magnitude of the risk, sent their special agent, Mr. Wilcox, to see that all was right. He came, and,
701 after making what he considered ample investigation and taking other risks, went away satisfied. The insurance was effected for the benefit of the son of the deceased, James H. Bangs, and was so entered in the policies. One other circumstance, and which was part of the testimony at the inquest, namely: His consulting the medical dispensatory at Stewart's drug-store has in no small degree tended to establish the fact that his death was the result of other than natural causes.

On Saturday night, about half-past eight o'clock, Mr. Stewart, on entering his store, found the deceased behind his prescription desk, examining his Dispensatory. They were but partially acquainted, and the usual salutation, "good evening," was passed between them. After a while, perhaps half an hour, the deceased started to retire, when he was asked if he had "found what he wanted?" He replied that he had and left the store. Mr. Stewart, however, says it is not an uncommon occurrence for persons to consult the Dispensatory; in fact, it is an almost every-day occurrence, and if deceased had not died, or had died in almost any other manner, it would not have been noticed.

Strenuous efforts were made to procure a *post-mortem* examination by the insurance agents, but the family would not consent, much to the disappointment of the public generally.

702 The funeral took place from his late residence on Thursday afternoon, and his remains were deposited in Oak Hill Cemetery.

Exhibit G to Bill of Complaint.

STATE OF MICHIGAN,
County of Oakland, ss:

The complaint of Charles E. Adams, of the City of Pontiac, in said county, taken and made before me, John H. Dresser, a Justice of the Peace of Independence, in said county, upon the 14th day of December, A. D. 1875, who being duly sworn, says that heretofore, to wit, on the fifth day of December, a person by the name of James H. Bangs has died; that he, said Bangs, so died on Sunday, the fifth day of December, instant, and that he, said Bangs, deceased as aforesaid, was buried in the City of Pontiac, in the said County of Oakland; and further, that the complainant has good reason to believe that said deceased person came to his death by means of poison.

CHARLES E. ADAMS.

Taken and subscribed and sworn before me, the 14th day and year first above written.

JOHN H. DRESSER,
Justice of the Peace.

STATE OF MICHIGAN,
County of Oakland, ss:

The examination of Charles E. Adams, and Joseph Williamson, and Chauncey Earl, and Frank B. Galbraith, taken upon oath before me, John H. Dresser, a Justice of the Peace of said County, on the 14th day of December, A. D. 1875, on the complaint made before me by the said Charles E.

703 Adams, that one James H. Bangs has died, and that the said Charles E. Adams has good reason to believe that the said deceased person came to his death by means of poison; and that said deceased person was buried in the City of Pontiac in said County.

The said Charles E. Adams, on his oath aforesaid before me, says: I reside in Pontiac, Oakland County, Michigan. I knew James H. Bangs in his lifetime. I understand that he is dead; that he died on Sunday evening the 5th instant. I am informed by current reports in the City of Pontiac that the circumstances of the death of the said Bangs were as follows:

On Sunday evening the wife of the deceased retired to her bed at the usual hour and left Mr. Bangs sitting up; that he, Bangs, was then in his usual health; that some little time after she, Mrs. Bangs, heard a fall and groans in the room below; she immediately arose and went down and found him, Bangs, on the floor in paroxysms; and that she ran to the nearest neighbor's for assistance, and after returning, awoke Mrs. Kittridge, who occupied a portion

of the house in which Mrs. Bangs lived; that Mrs. Bangs did not go
704 into the room where Mr. Bangs was lying; neither before nor till some time after his death.

I know of efforts having been made to procure a post-mortem examination of the body of the said Bangs. Mr. Watkins of Detroit, and Solon McElroy of Chicago, applied both to Mrs. Bangs and to Mr. Draper, of counsel for Mrs Bangs, for such post-mortem examination, but Mrs. Bangs and her counsel refused to permit the examination to be made. I know from general information that there was twelve thousand and five hundred insurance on the life of Mr. Bangs; and that all the papers relating to the same were placed in the hands of attorneys the next morning after he died.

CHARLES E. ADAMS.

Taken and signed the day and year first above written, before me.

JOHN H. DRESSER,
Justice of the Peace.

The said Joseph Williamson, on his oath aforesaid, before me, says: I live in the City of Pontiac, Oakland County, Michigan; I knew James H. Bangs in his life-time; I live directly in the rear of the house where he lived; Mr. Bangs is dead. He died on Sunday evening the fifth instant, at about ten minutes before twelve o'clock; I was present when he died; I was called out of
705 bed about half-past eleven on Sunday evening by Mrs. Bangs who had come to my door and rapped, and was admitted by my wife. Mrs. Bangs wanted me to hurry over to her house, as her husband was very sick or dying. I then went directly over to Mrs. Bangs' house; Mrs. Bangs went back with me, but did not go into her own part of the house; she went into the part occupied by Mrs. Kitridge; I went right into the house and into the room where Mr Bangs lay. I found Mr. Bangs lying on his back on the floor, stretched right out. He was lying quiet when I went in except that he had his arms drawn across his chest, and he was moaning, with frequent jerkings of the arms and chest; his hands were clenched; I took hold of his right arm and held it about three or four minutes, when he then turned his head and looked at me. I asked him if he had ever been troubled with anything of the kind before; and he answered, "No; I am dying." I asked if his trouble was in his head, and he did not give me any answer. I asked if I had not better send for a
706 doctor; he answered, "No, it is of no use, I am dying; you can do so if you want to." And then he asked, "Where is my wife?" That was the last he said. I then started to go into Mrs. Kitridge's after Mrs. Bangs, and just as I started Mrs. Kitridge came in; I told Mrs. Kitridge she had better send for a doctor; she then went after the doctor. I then turned to where Mr. Bangs lay, and found him jerking and in spasms again; I then caught him by the hand again and held it about a minute and a half or two minutes, when he stiffened and died. He did not come out of this last spasm before he died. Mrs. Bangs did not come into the room where Mr. Bangs was at all while I was there; I staid there about two hours and a half after he died. We laid out the dead body of Mr. Bangs about two hours after he died; his body was then stiff and rigid. It was about ten minutes I think after I first came into the room where Bangs lay that he died. I found him lying there alone, and no one was with him but myself up to the time of his death. I did not notice any red-
707 ness or fullness about Mr. Bangs' face; his countenance appeared pale, as I recollect it.

JOSEPH WILLIAMSON.

Taken and signed the day and year first above written, before me.

JOHN H. DRESSER,
Justice of the Peace.

The said Chauncey Earl, on his oath aforesaid before me, says: I live in the City of Pontiac; I am a physician and surgeon, and have been such for twenty-two years; I knew James H. Bangs in his life-time; I was called on December 5th, Sunday evening, 1875, about twelve o'clock, by a messenger to see Mr. Bangs; I went and reached Mr. Bangs' house within ten minutes after receiving the message; I found him at his residence lying on his back in a room on the floor and he was dead. They said in the house that he had been dead about five minutes; Mr. Williamson and Miss Kitridge were with the body; no one else was there; he was lying straightened out, perfectly straight upon the floor, with his right hand across his chest and left hand lying partially by his side; when I arrived I noticed particularly that the face of the deceased was pale; I remained in the room about two hours, and I noticed in about an hour and a half the limbs of the deceased became rigid; I did not see any visible indications of the cause of his death; by what I saw
708 and know I was suspicious that the death was caused by other than natural causes; Mrs. Bangs told me that the deceased told her when she went to bed that he was going to remain there to do some writing; I looked about for writing material and found none; I inquired of Mrs. Bangs where Mr. Bangs kept his writing material, and suggested he might have left some writing; she answered resentfully, "You do not suppose he committed suicide, do you?" and said, "I know better." I cannot account for the death of Mr. Bangs; I testified before the coroner's jury on the inquest held over the body of Mr. Bangs; I testified there in substance that I could find or give no adequate cause for the death of Mr. Bangs without having a post-mortem examination; I have been told by two of the jurymen, viz: Mr. Curtis and J. J. Green, that they had requested that a post-mortem examination be held on the former inquest, and that they were told that they could not have
709 a post-mortem examination. From what I saw and know of the symptoms of the deceased, I should say that the most probable cause of his death was poison. There is no other cause that can be reasonably assigned under the circumstances.

CHAUNCEY EARL.

Taken and subscribed the day and year first above written before me.

JOHN H. DRESSER,
Justice of the Peace.

The said Frank B. Galbraith, on his oath aforesaid before me, says: I reside in Pontiac; I am a physician and surgeon, and have practiced as such for fourteen years; I knew Mr. Bangs in his life-time; I examined Mr. Bangs on applications for life insurance twice within forty days before he died, and found him entirely sound and in vigorous health; I am acquainted from common report with the circumstances of his death, and have heard the testimony of the witness Stephen Williamson, Chauncey Earl, and Charles E. Adams, and judging from what I thus know, I think there are strong grounds to believe that there was foul play, and that the deceased did not die from natural causes. The symptoms, as I have heard them, indicate poison; there is no other assignable cause except poison, that can be given for his death,
710 that is consistent with the symptoms as given.

FRANK B. GALBRAITH.

Taken and subscribed the day and year first above written before me.

JOHN H. DRESSER,
Justice of the Peace.

STATE OF MICHIGAN,
County of Oakland, ss:

To the Sheriff of said County, greeting:

Whereas Charles E. Adams hath this day made complaint in writing and on oath to me, a justice of the peace of the township of Independence, in said county, that heretofore, to wit: on the fifth day of December, A. D. 1875, one James H. Bangs died, and that the body of said Bangs was subsequently buried in the City of Pontiac, in the said County of Oakland, and also that the said complainant has good reason to believe that said deceased person came to his death by means of poison; and whereas on examination on oath of said Charles E. Adams, and of witnesses by him produced, viz: Joseph Williamson, Chauncey Earl, and Frank B. Galbraith, it appears to me, the said justice of the peace, and I, being satisfied of the same that there is just cause to believe that the said deceased person named in said complaint came to his death by means of poison, and that a post-mortem examination of the body of such deceased person is necessary or will materially aid in the prosecution of any person who may be charged with any criminal act resulting in
711 the death of such deceased person; therefore, in the name of the people of the State of Michigan, you are hereby commanded forthwith to proceed with your under-sheriff, or one of your deputies, to the place where the said deceased person lies buried, and to disinter and remove the body of said deceased person to some suitable and convenient place within the city where the said body was buried, for the purpose of holding an inquest over the same.

Given under my hand and seal at the town of Independence, in said county, on the fourteenth day of December, A. D. 1875.

JOHN H. DRESSER,
Justice of the Peace.

Exhibit H.

To Edson C. Bangs and his legal representatives, attorneys and agents:

You are hereby notified that the policies of insurance heretofore issued by the undersigned insurance company, upon the life of James H. Bangs, lately deceased, will be treated by the said insurance company as null and void, for the reason that the same were fraudulently procured. The fraud thereof consisting in this, amongst other things, that the deceased at the time of procuring said policies intended to, and that he afterwards did, by means of
712 poison commit suicide. And the said insurance company hereby offer to rescind the contract to insure the life of said Bangs, deceased, in pursuance of which the said policies were issued, and to surrender up and return all moneys or evidences of debt, or other valuable thing whatsoever which have been received by them, said company, under or in pursuance of such contract. This notice being given however subject to the request and offer relative to an examination of the remains of said deceased person, which is hereto subjoined and herewith made by said insurance company.

Dated, Detroit, 19th Feb., 1876.

THE NEW-YORK LIFE INSURANCE COMPANY,
By HERBERT L. BAKER,
Their Attorney.

To Edson C. Bangs, Eliza E. Bangs and to their legal representatives, attorneys and agents:

The New-York Life Insurance Company hereby request you to consent that a post-mortem examination of the remains and a chemical analysis of the stomach of James H. Bangs, deceased, be made by Dr. Chandler, of New-York, or by Dr. S. H. Douglass, of the Michigan University, or by some other competent expert, for the purpose of ascertaining whether the said deceased died from the effects of poison. The said insurance company
713 hereby offering as follows:

If upon such examination being made, no poison be found, they, the said company, will pay the policies of insurance issued by them upon the life of said Bangs, deceased.

Inasmuch as no time should be lost in having the proposed examination made, you are also requested to reply hereto without delay, stating whether or not you will accede to the above request.

Detroit, 19th Feb., 1876.

THE NEW-YORK LIFE INSURANCE COMPANY.

By HERBERT L. BAKER,
Their Attorney.

UNITED STATES OF AMERICA,
Eastern District of Michigan, ss:

Daniel Hubbell, being duly sworn, deposes and says: That he resides in the City of Pontiac, in said district; that he knew James H. Bangs, now deceased, in his life-time, and had been acquainted with said Bangs previous to his death about six months; that deponent is, and for some time past, has been an insurance agent at Pontiac aforesaid; that in the month of September last past, said Bangs proposed to deponent to take out a policy of insurance upon his, said Bangs', life, in the amount of ten thousand dollars; that de-
714 ponent was not at that time the agent for any life insurance company, but that he replied to said Bangs that if he, Bangs, would take a policy in that amount, he, deponent, would procure an appointment as agent for a life insurance company; that deponent had at that time papers showing the forms of applications and policies used by the National Life Insurance Company of the United States, which forms deponent showed to said Bangs, but that said Bangs was not satisfied with them, and made it an objection to them—said forms of applications and policies—that they contained the clause which is commonly known as the suicide clause; viz., a clause providing that the policy shall be void in the event of the insured "dying by the hand of justice, insurrection, or suicide"; deponent then applied for and obtained blank applications for insurance in the Mutual Insurance Company of New-York, together with forms of its policies; but these also were objected to by said Bangs for the reason that they contained the aforesaid clause in
715 reference to suicide; deponent then obtained applications and forms of policies from Mr. Fox, of Grand Rapids, state agent for the Mutual Benefit Life Insurance Company of New Jersey, which were also rejected by said Bangs for the same reason above stated.

Said Bangs then proposed to deponent that if deponent would obtain the agency for the New-York Life Insurance Company, he Bangs, would take out a policy in that company, as he was acquainted with its forms of policies, and liked them better.

Accordingly deponent solicted the agency for said last named company, and about the first day of November obtained such agency, whereupon said Bangs made two applications for policies of insurance in said last named company, of five thousand dollars each, one on the whole life plan, and the other in ten-year Tontine period, premium payable semi-annually; and gave in payment for the first premium two notes of $205.80 each, payable in twenty days from date; said notes being dated the 16th day of November, 1875. These
716 applications were forwarded to the home office, and policies of the description therein applied for were issued, and on the 29th day of November aforesaid, were delivered by deponent to said Bangs. While the forms of policies above mentioned were being submitted, and before said applications had been taken, said Bangs made application to the Continental Life Insurance Company of New-York to insure his life in the sum of $2,500, and for payment of the first premium on this insurance also gave his note, to be due in ninety days. Being aware of the latter transaction deponent supposed said Bangs would take but $5,000 insurance in the New-York Life Insurance Company, and accordingly filled out but one application. Upon going before the medical examiner, said Bangs remarked, "You have but one application, where is the other?" to which deponent replied, that having known of his insuring for the above mentioned sum of $2,500, deponent supposed he, said Bangs, had got all he cared to carry, to which said Bangs replied,
717 "It being only $2,500 more than the amount first talked of, I think I can get along with it," and deponent thereupon filled out the other of said applications to the New-York Life Insurance Company.

Deponent further says that said Bangs was in good health up to the time the said policies were delivered by him; that shortly after the delivery of said two policies and during the same week he was informed that said Bangs had been taken sick after the delivery of said policies, but had recovered. That deponent is acquainted from common report and otherwise with the facts of and circumstances attending the death of said Bangs and that the same are substantially as set forth in the newspaper article contained in the Pontiac Weekly Gazette of 10th December, 1875, a copy of which is hereto annexed. That deponent attended the coroner's inquest which was held in view of the body of said Bangs on the 7th day of December and was sworn as a witness thereupon, and that he there testified substantially as herein set forth. That there was a decided general feeling amongst the citizens of Pontiac both before and after and at the time of said inquest that a post-mortem
718 examination of the body of said Bangs ought to be held. That one of the said coroner's jury, viz: Jarvis J. Green said on the inquest that it would be more satisfactory to the jury if they could have some definite evidence as to what was the cause of the death of the deceased; that said Green also then asked Doctor Chancey Earl—who was examined as a witness on said inquest—whether he, said Earl, could tell the cause of death by a post-mortem examination, to which said Dr. Earl answered that he did not know whether he could or not. Deponent further says that several of the said jurymen have expressed dissatisfaction on account of not having been able to determine the cause of said death, and stated that they would have insisted upon having a post-mortem examination if they had thought that the evidence which was adduced before them would have warranted them in so doing. Deponent further says that it was stated and was commonly understood before, at and after said inquest, that Eliza E. Bangs, the widow of said James H. Bangs, opposed and would not consent to the holding of a
719 post-mortem examination; that Warren Draper, Esquire, who was then acting as the legal adviser of said Mrs. Bangs, attended the said inquest and was present the greater part of the time while the same was going on; that he stated to deponent on Monday, the 6th of November, that there would be an inquest.

Deponent further says that he is informed from common report and believes the same to be the fact, that said Doctor Earl immediately after said inquest stated generally and gave it as his opinion, that said Bangs died from poison; that he died in just the manner in which people die from taking strychnia.

DANIEL HUBBELL.

Subscribed and sworn to before me, this fifteenth day of March, A. D. 1876.

JNO. GRAVES,
U. S. Circuit Court Commissioner,
Eastern District Michigan.

To the parent or guardian of Edson C. Bangs, an infant, named in the annexed writ:

Please to take notice that the annexed writ of subpœna, requiring the defendant, Edson C. Bangs, to appear and answer the bill of complaint therein mentioned, and that it will be necessary for the said infant to have a
720 guardian appointed, to appear and defend his interests in said cause.

Yours, &c.,

H. L. BAKER,
Solicitor for Complainants.

Eastern District of Michigan, ss:

I hereby certify and return, that on the fourth day of April, A. D. 1876, I served the within writ, and a copy of the within notice, on John M. Smith, guardian of Edson C. Bangs, one of the defendants within named, at Pontiac, in said district, by delivering the same to him personally; and I further return that I have made diligent search for Edson C. Bangs and Eliza E. Bangs, and cannot find either of them in my bailiwick.

JOS. R. BENNETT,
U. S. Marshal.

CIRCUIT COURT OF THE UNITED STATES OF AMERICA,
For the Sixth Circuit and Eastern District of Michigan.—In Chancery.

The President of the United States of America.

[SUBPŒNA.] To Edson C. Bangs and Eliza E. Bangs, of Pontiac, Michigan, who are citizens of the State and residents of the Eastern
[SEAL OF COURT.] District of Michigan:

You are hereby commanded to be and appear in the Circuit Court of the United States of America, for the Sixth Circuit and Eastern District of Michigan, sitting in Chancery, before the judges thereof, at the District Court Room, in the City of Detroit, on the first Monday of May, next ensuing, then and there to answer unto a bill of complaint exhibited against you as
721 defendant by the New-York Life Insurance Company, a corporation organized and existing under the laws of the State of New-York, and

a citizen of the State of New-York, as complainant. And this you shall in no wise omit, under the penalty of one thousand dollars.

Witness, the Hon. Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this twenty-fourth day of March, in the year of our Lord one thousand eight hundred and seventy-six, and of the independence of the United States the one hundredth.

MEMORANDUM.—The above-named defendants are required to enter their appearance in this suit with the Clerk of this Court, at his office in the City of Detroit, on or before the day on which this Writ of Subpœna is returnable, otherwise the Bill of Complaint in this cause will be taken *pro confesso* against said defendant.

ADDISON MANDELL,
Clerk.

Eastern District of Michigan, ss:

I hereby certify and return that on the 13th day of April, A. D. 1876, I served the within subpœna, together with a copy of the within notice, on M. Crofoot, counsel for Eliza E. Bangs, one of the defendants within named, at Detroit, by delivering the same to him personally.

JOS. R. BENNETT,
U. S. Marshal.

Eastern District of Michigan, ss:

I hereby certify and return that on the 29th day of April, A. D. 1876, I served the annexed subpœna on Eliza E. Bangs, one of the defendants
722 therein named, at Pontiac, by leaving a copy of the same at her last known place of residence in said district.

ALVIN C. HIGH,
Deputy U. S. Marshal.

THE CIRCUIT COURT OF THE UNITED STATES OF AMERICA,
For the Eastern District of Michigan, ss:—In Equity.

The President of the United States of America.

To Edson C. Bangs and Eliza E. Bangs, and to their counselors, attorneys, solicitors and agents, and each and every of them, greeting:

Whereas, It has been represented to us in the Circuit Court of the United States for the Eastern District of Michigan, in equity, on the part of the New-York Life Insurance Company, complainant, that they have lately exhibited their Bill of Complaint against you, the said Edson C. Bangs and Eliza E. Bangs, to be relieved, touching the matters therein complained of; in which bill it is stated, amongst other things, that you are combining and confederating with others to injure the said complainants touching the matters set forth in the said bill, and that your actings and doings in the premises are contrary to equity and good conscience; we, therefore, in consideration thereof, and of the particular matters in the said bill set forth do strictly command you, the said Edson C. Bangs and Eliza E. Bangs, and the persons before mentioned,

and each and every of you, under the penalty of ten thousand dollars,
723 to be levied on your lands, goods and chattels, to our use, that you do absolutely desist and refrain from instituting, or bringing, or carrying on any action at law against the said New-York Life Insurance Company upon the policies of insurance named in said bill, the same being policies issued by the said complainants, and wherein they agreed to insure the life of James H. Bangs, named in said bill, for the benefit of said Edson C. Bangs, or upon either of them; and from otherwise seeking to compel the said complainants to pay any sum or sums of money, by reason of the said agreement to insure the life of James H. Bangs, and the further order of this Court.

[COURT SEAL.] Witness, the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, and the seal of said Court, at Detroit, this twenty-fourth day of March, in the year one thousand eight hundred and seventy-six.

ADDISON MANDELL,
Clerk.

HERBERT L. BAKER,
Solicitor for Complainant.

Eastern District of Michigan, ss:

I do hereby certify and return, that on the fourth day of April, A. D. 1876, I served the within writ on John M. Smith, the general guardian of Edson C. Bangs, one of the defendants within named, at Pontiac, in said District, by delivering to him personally a true copy, and showing him the seal of the Court impressed thereon.

724 J. R. BENNETT,
U. S. Marshal.

CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF MICHIGAN.

THE NEW-YORK LIFE INSURANCE COMPANY,
vs.
EDSON C. BANGS AND ELIZA E. BANGS. } In Equity.

UNITED STATES OF AMERICA,
Eastern District of Michigan, ss:

Herbert L. Baker, being duly sworn, says that the subpœna and injunction issued in the above entitled cause have been for a week past in the hands of the marshal of said court for service; that the said marshal reports to deponent that the said defendants are not to be found in said district; that they have locked up the house wherein they reside and have temporarily absented themselves from said State and that he, said marshal, is unable to find any one now in charge of the said house.

Deponent further says that the defendants have heretofore resided in this district, viz: at the City of Pontiac therein, and that as deponent is informed

and believes their residence is still in the said city and district; that as deponent is informed and believes, the defendant, Eliza E. Bangs, still has possession of the dwelling-house in said city wherein she now has her house-
725 hold goods and other effects, and that upon going away she, said defendant, obtained insurance upon said goods and effects for sixty days, saying to the person of whom she obtained such insurance that she expected to return in about the said period of sixty days, as deponent is informed. Deponent is also informed and believes that the defendants so departed from this district as aforesaid within the past sixty days; that Warren Draper, Esq., and M. E. Crofoot, Esq., of said city, are employed and are acting as attorneys for the defendants in relation to the matters alleged in the complainant's bill of complaint herein; that the said attorneys acted as attorneys for the defendant, Eliza E. Bangs, in the proceedings set forth in said bill of complaint, to the personal knowledge of deponent.

Deponent further says that the defendant, Edson C. Bangs, is a minor and lives with the defendant, Eliza E. Bangs; that one John M. Smith,
726 who resides in the city of Pontiac aforesaid, has been appointed the general guardian of said Edson C. Bangs, and is now acting as such.

HERBERT L. BAKER.

Subscribed and sworn to before me, this 4th day of April, A. D. 1876.

GEORGE T. CAMPAU,
Notary Public,
Wayne County, Michigan.

At a session of the Circuit Court of the United States, for the Eastern District of Michigan, continued and held pursuant to adjournment at the District Court room, in the City of Detroit, on Tuesday, the eleventh day of April, in the year 1876.

Present—HON. HALMER H. EMMONS,
Circuit Judge.

THE NEW-YORK LIFE INSURANCE COMPANY, *vs.* EDSON C. BANGS AND ELIZA E. BANGS. } In Equity.

On reading and filing the affidavit of Herbert L. Baker in this cause, and the return of the marshal of said court to the subpœna and injunction issued herein; on motion of Herbert L. Baker, solicitor for the complainants, it is ordered that the service of said subpœna and the injunction heretofore issued in this cause which has been made upon John M. Smith, the general guardian of the defendant, Edson C. Bangs, be good service upon said Edson C. Bangs, and as effectual as though the same were made upon said Edson C. Bangs in person.

It is further ordered, that service of the said subpœna and injunction may be made upon the defendant, Eliza E. Bangs, by serving the same on
727 M. E. Crofoot, Esq., or Warren N. Draper, Esq., of the City of Pontiac, in said District, together with a copy of this order; and by leav-

ing a copy of said subpœna at the last known place of residence of said Eliza E. Bangs in said district.

It is also further ordered, that a copy of this order be served on said guardian within ten days from the date thereof.

CIRCUIT COURT OF THE UNITED STATES, FOR THE EASTERN DISTRICT OF MICHIGAN.

THE NEW-YORK LIFE INSURANCE COMPANY,
vs.
EDSON C. BANGS AND ELIZA E. BANGS. } In Equity.

The petition of the New-York Life Insurance Company, the complainants in this suit, respectfully shows that the bill in this suit was filed against the defendants to set aside two policies of insurance issued by the complainants, your petitioners, upon the life of one James H. Bangs—lately deceased—in his life-time, father of the defendant, Edson C. Bangs, and husband of the defendant, Eliza E. Bangs, each of said policies of insurance being for the sum of five thousand dollars, and for the benefit of said Edson C. Bangs.

And your petitioners further show that the said Edson C. Bangs resides in the city of Pontiac, in said district, but is, as your petitioners are
728 informed, temporarily absent therefrom; that he is, as your petitioners are informed and believe, an infant over the age of fourteen years, to wit, of the age of fifteen years and upwards; and that on the 4th day of April, 1876, a subpœna in this cause directed to the said Edson C. Bangs, and requiring him to appear to and answer the said bill, was duly served on John M. Smith, who is the general guardian of the said Edson C. Bangs, and resides in the city of Pontiac aforesaid; that the officer holding said subpœna for service was unable to find the said Edson C. Bangs in said district; that on the 11th day of April, aforesaid, an order was duly made and entered in this cause, directing amongst other things, that the service upon the said general guardian of said subpœna made as aforesaid, be good service upon said Edson C. Bangs, and as effectual as though the same had been made personally upon said Edson C. Bangs; that afterwards and on the fourteenth day of April, aforesaid, as your petitioners are informed, a copy of said last named order was duly served on the said John M. Smith.

Your petitioners further show that the said subpœna was returnable
729 on the first day of May instant; that your petitioners caused to be attached to and served with said subpœna, a notice to said guardian, of the nature of said writ of subpœna and of the necessity for the said infants having a guardian appointed to appear and defend his interests. And your petitioners further show that although the said subpœna was served as aforesaid, more than twenty days before the return day thereof, the same being the day on which the defendants were required to enter their appearance in this cause, and although the said appearance day has now gone by, no guardian *ad litem* has as yet been appointed for such infant, or applied for him, or by any person on his behalf, to the knowledge or belief of your petitioners. Your petitioners therefore pray that an order may be made and entered herein appointing some

suitable and competent person, to be selected by the court, a guardian *ad litem* of the said infant defendant, to appear and defend this suit on his behalf.

And your petitioners shall ever pray, &c.,

730 THE NEW-YORK LIFE INSURANCE CO.
By H. L. BAKER,
Solicitor for Petitioners.

UNITED STATES OF AMERICA,
Eastern District of Michigan, ss:

On this eleventh day of May, A. D. 1876, before me personally came the above named Herbert L. Baker, and made oath that he has read the foregoing petition by him subscribed on behalf of and as attorney for the New-York Life Insurance Company above named, and knows the contents thereof, and that the same is true of his own knowledge, except the matters which are therein set forth upon information and belief, and as to those matters he believes them to be true.

JNO. GRAVES,
U. S. Commissioner,
Eastern District Michigan.

CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF MICHIGAN.

THE NEW-YORK LIFE INSURANCE COMPANY,
vs.
EDSON C. BANGS AND ELIZA E. BANGS. } In Equity.

UNITED STATES OF AMERICA,
Eastern District of Michigan, ss:

Herbert L. Baker being duly sworn, says: that he is the solicitor for the complainants in the above entitled cause; that the bill in said cause is brought to set aside certain policies of insurance issued upon the life of one James H. Bangs in his life-time, now deceased, upon the ground that said
731 Bangs committed suicide, as set forth in said bill; that the defendants have hitherto refused to permit a post-mortem examination of the remains of said James H. Bangs to be made for the purpose of ascertaining the cause of his said death, and have taken active measures to prevent such examination, as stated in said bill; that the defendants now still do withhold their consent to such examination.

Deponent further says that he has good reason to believe and does verily believe that the defendants are well aware of the pendency of this cause against them, and of the nature of the same, and that they are absenting themselves from the said district for the purpose of avoiding service of process in this cause, in order to embarrass and delay the complainants' proceedings herein.

Deponent further says that the nature of this cause is such that the defendants should be required to make such answer as they may have to

make to said bill without any unnecessary delay; that as he is ad-
732 vised, any delay by which the aforesaid examination is postponed renders it more difficult by such examination to ascertain the cause of said death.

HERBERT L. BAKER.

Subscribed and sworn to before me, this 15th day of May, 1876.

JNO. GRAVES,
United States Commissioner,
Eastern District Michigan.

At a session of the Circuit Court of the United States for the Eastern District of Michigan continued and held pursuant to adjournment at the District Court-room in the City of Detroit, on Monday, the 15th day of May, in the year 1876.

Present—HON. HENRY M. BROWN,
District Judge.

THE NEW-YORK LIFE INSURANCE COMPANY,
vs.
EDSON C. BANGS AND ELIZA E. BANGS. } In Equity.

MAY 15, 1876.

On reading and filing the petition of the complainants in this cause showing that the defendant, Edson C. Bangs, is an infant over the age of fourteen years, to wit: of the age of fifteen years and upwards, and that a subpœna to appear and answer in this cause returnable on the first day of May instant has been duly served on the said Edson C. Bangs, in accordance with the terms of the order in that regard made and entered in said cause on the 11th day of April, A. D. 1876, by serving the same on John M. Smith, the general guardian of said infant, together with a notice to said guardian of the necessity for the said infant's having a guardian appointed to appear and defend his interests; and that although the said subpœna was served more than twenty days
733 before the return day thereof, and although said return day has now gone by no guardian *ad litem* has as yet been appointed for said infant or applied for by him, or by any person on his behalf, and praying for the appointment of a suitable and competent person as such guardian *ad litem* to appear and defend this suit on behalf of said infant. On motion of H. L. Baker, of counsel for the complainants, it is ordered that the said John M. Smith, the general guardian of said infant, be appointed such guardian *ad litem*, unless the said Edson C. Bangs shall, within ten days after service of a copy of this order shall be made as hereinafter directed, himself procure a guardian *ad litem* to be appointed. It is further ordered that this order may be served by delivering a copy thereof to the said infant, or if said infant be not found at his usual place of residence in said District, by delivering such copy to the said John M. Smith. And on reading and filing the affidavit of Herbert L. Baker it is also further ordered that the appearance of the said infant
734 defendant be entered, and his plea, demurrer or answer to the bill of complaint herein be filed in this cause within fifteen days after service of a copy of said bill of complaint and of this order upon said John M. Smith;

and that in default of such appearance and answer, plea or demurrer the complainants may at their election enter an order as of course that the said bill be taken *pro confesso* as against said Edson C. Bangs, under rule No. 18 of the General Equity Rules.

H. S. BROWN,
District Judge.

CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF MICHIGAN.

THE NEW-YORK LIFE INSURANCE COMPANY,
vs.
EDSON C. BANGS AND ELIZA E. BANGS. } In Equity.

UNITED STATES OF AMERICA, STATE OF MICHIGAN,
County of Oakland, ss :

Alfred M. Baker of Clarkston in said county, being duly sworn, says : That on the fourteenth day of April A. D. 1876, he served on John M. Smith, the general guardian of Edson C. Bangs, above named, at the City of Pontiac, a copy of the order made in said cause on the eleventh day of April,
735 1876, which said order directed amongst other things that the service of the subpœna issued in said cause which had theretofore been made on said John M. Smith, be good service on said Edson C. Bangs and as effectual as though the same were made upon said Edson C. Bangs in person.
And further deponent says not.

ALFRED M. BAKER.

Subscribed and sworn to before me this 18th day of May, A. D. 1876.

JOHN H. DRESSER,
Justice of the Peace.

CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF MICHIGAN.

THE NEW-YORK LIFE INSURANCE COMPANY,
vs.
EDSON C. BANGS AND ELIZA E. BANGS. } In Equity.

On reading and filing the affidavit of Herbert L. Baker in this cause, and the return of the marshal of said court to the subpœna and injunction issued herein, on motion of Herbert L. Baker, solicitor for the complainants, it is ordered that the service of the said subpœna and injunction heretofore issued in this cause, which has been made upon John M. Smith, the general guardian of the defendant, Edson C. Bangs, be good service upon said Edson C. Bangs, and as effectual as though the same were made upon the said Edson C. Bangs in person.

It is further ordered that service of the said subpœna and injunction may be made upon the defendant, Eliza E. Bangs, by serving the same on M. E. Crofoot, Esq., or Warren N. Draper, Esq., of the city of Pontiac, in
736 said district, together with a copy of this order, and by leaving a copy of said subpœna at the last known place of residence of said Eliza E. Bangs, in said district.

It is also further ordered that a copy of this order be served on said guardian within ten days from the date hereof.

To M. E. Crofoot, Esq., or W. N. Draper, Esq.:

Please take notice that the foregoing is a copy of an order this day made and entered in the above entitled cause.

Detroit, April 11th, 1876.

Yours, &c.,

H. L. BAKER,

Complainants' Solicitor.

UNITED STATES OF AMERICA,

Eastern District of Michigan, ss:

Robert Mc D. Campau, being duly sworn, says: That on the 11th day of April, 1876, he served on M. E. Crofoot, Esq., a copy of the foregoing order and notice by delivering such copy to him personally at his office in Detroit.

ROBERT Mc D. CAMPAU.

Subscribed and sworn to before me, this 5th day of June, A. D. 1876.

ADDISON MANDELL,

Commissioner of Circuit Court U. S.,

Eastern District of Michigan.

CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF MICHIGAN.

THE NEW-YORK LIFE INSURANCE COMPANY,
vs.
EDSON C. BANGS AND ELIZA E. BANGS. } In Equity.

UNITED STATES OF AMERICA,

Eastern District of Michigan, ss:

737 Robert M. Campau, being duly sworn, says: That on the 17th day of May, he served on John M. Smith, the general guardian of Edson C. Bangs, above named, a copy of the complainants' bill of complaint in said cause, together with a copy of the order made and entered in said cause on the fifteenth day of May, appointing the said Smith the guardian *ad litem* of said Edson C. Bangs, and directing that the appearance of said Edson C. Bangs be entered and his demurrer, plea or answer to said bill be filed in said cause within a time therein specified, or else that said bill be taken as con-

fessed; that he served said copies by delivering the same to said John M. Smith in person, at the City of Pontiac, in said District. Deponent further says, that he is unable to find the said Edson C. Bangs at his usual place of residence in said district, although he has made inquiry and search for that purpose in the said City of Pontiac, whereas he is informed and believes, said Edson C. Bangs usually resides.

R. Mc D. CAMPAU.

Subscribed and sworn to before me, this 18th of May, A. D. 1876.

738 JNO. GRAVES,
U. S. Circuit Court Commissioner,
Eastern District Michigan.

CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF MICHIGAN.

THE NEW-YORK LIFE INSURANCE COMPANY,
vs.
EDSON C. BANGS AND ELIZA E. BANGS. } In Equity.

UNITED STATES OF AMERICA,
Eastern District of Michigan, ss:

Herbert L. Baker being duly sworn, says: That he is the solicitor for the complainants in the above entitled cause; that more than ten days have elapsed since the service upon John M. Smith of a copy of the order made in said cause appointing him, said Smith, the guardian *ad litem* in this cause for the defendant Edson C. Bangs an infant, unless said last named defendant should within ten days after service of a copy of said order himself procure a guardian *ad litem* to be appointed; and that deponent has received no notice of the appointment of a guardian *ad litem* for said infant.

HERBERT L. BAKER.

Subscribed and sworn to before me, this 5th day of June, A. D. 1876.

CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF MICHIGAN.

THE NEW-YORK LIFE INSURANCE COMPANY,
vs.
EDSON C. BANGS AND ELIZA E. BANGS. } In Equity.

An order having been made in this cause on the 15th day of May, 1876, appointing John M. Smith—general guardian of said Edson C.
739 Bangs—the guardian *ad litem* of the said defendant, Edson C. Bangs, unless the said Edson C. Bangs should within ten days after service of a copy of said order, himself procure a guardian *ad litem* to be appointed; on reading and filing an affidavit of Robert McD. Campau, proving the service of

a copy of such order on the said John M. Smith, as in said order directed, on the 17th day of May, aforesaid, and on reading and filing the affidavit of Herbert L. Baker, complainants' solicitor, showing that more than ten days have elapsed since the service of a copy of said order on said John M. Smith, yet that he has received no notice of the appointment of a guardian *ad litem* for said infant defendant, Edson C. Bangs; on motion of Herbert L. Baker, of counsel for the complainants, ordered that the said order be and the same is hereby made absolute.

HERBERT L. BAKER,
Complainants' Solicitor.

CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF MICHIGAN.

THE NEW-YORK LIFE INSURANCE COMPANY,
vs.
EDSON C. BANGS AND ELIZA E. BANGS. } In Equity.

740 On filing proof of service of the subpœna issued in this cause on Eliza E. Bangs, one of the defendants therein, in accordance with and in the manner pointed out by the terms of the order made and entered herein on the 11th day of April, 1876, directing, amongst other things, that service of said subpœna might be made upon the defendant, Eliza E. Bangs, by serving the same on M. E. Crofoot, Esquire, or Warren N. Draper, Esquire, and by leaving a copy of said subpœna at the last known place of residence in said district of said last named defendant; and it appearing that such service of said subpœna was made before the return day thereof. And on filing due proof also of service upon M. E. Crofoot, Esquire, of a copy of said order, as in the said order directed; and the said defendant, Eliza E. Bangs, having failed to appear within the time limited and prescribed by the rules and practice of this court.

On motion of Herbert L. Baker, solicitor for the complainants, it is ordered that the bill of complaint filed in this cause, be and the same is hereby
741 taken as confessed by the said defendant, Eliza E. Bangs.

The Clerk will please enter the foregoing order in the order-book.

HERBERT L. BAKER,
Solicitor for Complainants.

CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF MICHIGAN.

THE NEW-YORK LIFE INSURANCE COMPANY,
vs.
EDSON C. BANGS AND ELIZA E. BANGS. } In Equity.

On filing due proof of personal service upon John M. Smith, the guardian *ad litem*, heretofore appointed in said cause, of a copy of the complainants' bill of complaint herein, together with a copy of the order made and entered in this

cause, on the 13th day of May, 1876, directing that said John M. Smith be appointed the guardian *ad litem* in this cause, of the defendant Edson C. Bangs, an infant, and also directing that the appearance of the said infant defendant be entered and his demurrer, plea or answer to the said bill be filed within fifteen days after service of a copy of said bill, and of said order on said guardian *ad litem*, or in default thereof the said bill might be taken as confessed against said infant defendant; which said personal service ap-
742 pears to have been made on the 17th day of May, 1876, and more than fifteen days having elapsed since said last named day, and the said infant defendant having failed to appear or answer, plead or demur within the time prescribed by the said order. On motion of Herbert L. Baker, solicitor for the complainants, it is ordered that the bill of complaint filed in this cause, be and the same is hereby taken as confessed by the said defendant Edson C. Bangs.

The clerk will please enter the above order in the order-book.

HERBERT L. BAKER,
Solicitor for Complainants.

CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF MICHIGAN.

THE NEW-YORK LIFE INSURANCE COMPANY,
vs.
EDSON C. BANGS AND ELIZA E. BANGS. } In Equity.

The petition of the New-York Life Insurance Company respectfully represent that they are the complainants in the above entitled cause; that the above named defendant Edson C. Bangs is a minor, as petitioners are informed and believe, that said minor was required by the subpœna issued in this cause to appear herein on the first Monday in May, 1876. That said infant
743 has not appeared herein; that on the fifteenth day of May aforesaid an order was made and entered in this cause upon the petition of complainants, directing that one John M. Smith of Pontiac in said district, who was and is the general guardian of said infant be appointed the guardian *ad litem* in this suit of said infant and directing also that the appearance of the said infant be entered and his plea, answer or demurrer to the complainants' bill be filed within fifteen days after service upon said guardian *ad litem* of a copy of said last named order and of a copy of said bill, or that in default thereof said bill might be taken as confessed; that such service was duly made on the seventeenth day of May aforesaid; that no appearance has been entered by or on behalf of said infant and that said Smith has not accepted the said appointment as guardian *ad litem* or done any act recognizing said appointment except to write to the Hon. Henry B. Brown a letter, a copy of which is hereunto attached and marked "Exhibit A," which said let-
744 ter was received by Judge Brown, as petitioners are informed on or about the 5th instant, and was on the 7th instant answered by Addison Mandell, Esquire, clerk of said court by a letter, a copy of which is hereto annexed and marked "Exhibit B"; that nothing further has been done by said Smith in relation of this cause to the knowledge of your petitioners.

Your petitioners further show, as they verily believe, that said Smith does not intend to submit the rights of said infant to the adjudication of this court, but that he desires to prevent the same from being so submitted. They show that he, said Smith, was fully notified of this suit on the 4th day of April last, at which time he was served with a copy of the subpœna issued to said defendants on the filing of said bill, together with a notice in writing, advising him of the nature of said writ, and of the necessity for the said infant's having a guardian, *ad litem*, appointed to appear and defend his interests in this suit; that on the 14th day of April aforesaid, said Smith was served
745 with a copy of the order made in said cause, on the 11th day of April aforesaid, directing that the said service of said subpœna be good service on said infant.

Your petitioners further show that it is important that the rights of the parties hereto should be brought before the court for hearing and an adjudication thereupon without delay; that upon the 5th day June aforesaid an order was entered herein, taking the said bill as confessed.

Wherefore your petitioners pray that an order may be entered herein, revoking the appointment of said Smith as guardian, *ad litem*, herein, and directing the appointment of a solicitor or other officer of this court, or some other suitable person, as such guardian, *ad litem*, to make answer to the said bill, or otherwise bring the rights of said infant before the court within ten days from his acceptance of such appointment; and for such further or other order as to the court may seem meet.

THE NEW-YORK LIFE INSURANCE CO.,
By HERBERT L. BAKER,
Their Attorney in fact.

HERBERT L. BAKER,
Complainant's Solicitor.
746

UNITED STATES OF AMERICA,
Eastern District of Michigan, ss:

On this 10th day of June, A. D. 1876, before me personally came Herbert L. Baker, above named, and made oath that he has read the foregoing petition and knows the contents thereof, and that the same is true of his own knowledge except the matters which are therein stated upon information and belief, and as to those matters he believes it to be true.

ADDISON MANDELL,
Commissioner of Circuit Court U. S.,
Eastern District of Michigan.

Exhibit A.

PONTIAC, MICHIGAN, June 5th, 1876.

JUDGE H. B. BROWN,
Detroit, Michigan.

Dear Sir: About three weeks ago I was informed by one Mr. Baker, a lawyer of your city, that you had appointed me as a general guardian for Edson C. Bangs, the son of James H. Bangs and Mrs. E. E. Bangs. Mr. Bangs died very suddenly last December, and his life was insured in the New-York Life Insurance Company, and it appears there is a suit pending in your

Court. The papers you sent me have got misplaced. Will you please inform me soon what is my lawful duty in this matter, and do you wish to
747 see me personally in this matter soon? I will be ever so much obliged to you for the above information, as I wish to protect the boy's interest in every particular.

Yours truly,

JOHN M. SMITH.

Exhibit B.

DETROIT, MICH., June 7th, 1876.

MR. JOHN M. SMITH,
Pontiac.

Dear Sir: Your letter of the 5th inst. was received by Judge Brown, who requested me to reply to it.

If you desire to protect the interests of your wards, you had better make answer according to law and the practice of the court, and if you are not an attorney, in my opinion you had better take advice of legal counsel, and appear and answer in the case.

Your counsel will advise you as to your legal rights and obligations. You are already in default; whatever you do should be done promptly.

Respectfully yours,
ADDISON MANDELL,
Clerk.

Let an order be entered upon the within petition, appointing Henry A. Harmon, a solicitor of this court, the guardian *ad litem* of the within named infant, in the place of the within named John M. Smith, who has failed to act, and directing such guardian *ad litem* to answer as therein prayed.

748 H. H. E.,
C. C. J.

At a session of the District Court of the United States, for the Eastern District of Michigan, continued and held pursuant to adjournment at the District Court room in the City of Detroit, on Thursday, the 15th day of June, in the year 1876.

Present—HENRY B. BROWN,
District Judge.

THE NEW-YORK-LIFE INSURANCE COMPANY,
vs.
EDSON C. BANGS AND ELIZA E. BANGS. } In Equity.

On reading and filing the petition of the complainants above named, whereby it appears that John M. Smith, the guardian *ad litem* heretofore appointed of the defendant, Edson C. Bangs, in this cause, has not accepted such appointment, and who has failed to act duly as such guardian *ad litem*, it is ordered that the appointment of said Smith as such guardian made as aforesaid, be

revoked; and it is further ordered that Henry A. Harmon, Esq., a solicitor of this court, be appointed the guardian *ad litem* in this cause of said Edson C. Bangs, and that he make answer to the complainant's bill on behalf of
749 said infant, Edson C. Bangs, or otherwise bring the rights of said infant before the court within ten days from his acceptance of such appointment.

CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF MICHIGAN.

THE NEW-YORK LIFE INSURANCE COMPANY,
vs.
EDSON C. BANGS AND ELIZA E. BANGS. } In Equity.

I hereby consent to become the guardian *ad litem* of the above named defendant, Edson C. Bangs, an infant, in the above entitled cause.

HENRY A. HARMON.

UNITED STATES OF AMERICA,
Eastern District of Michigan, ss:

George W. Moore, being duly sworn, says that on the 17th day of June instant, he saw the above named Henry A. Harmon, to him personally known, sign the foregoing consent to act as guardian *ad litem* in the above entitled cause.

GEORGE W. MOORE.

Subscribed and sworn to before me, this 17th day of June, A. D. 1876.

A. MANDELL,
Commissioner of Circuit Court,
Eastern District of Michigan.

IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF MICHIGAN.

THE NEW-YORK LIFE INSURANCE COMPANY,
Complainants,
vs.
EDSON C. BANGS AND ELIZA E. BANGS,
Defendants. } In Equity.

The answer of Edson C. Bangs, an infant, under the age of 21, by Henry A. Harmon, his guardian *ad litem*, one of the defendants to the
750 bill of complaint of New-York Life Insurance Company, complainants:

1. This defendant answering, admits upon information and belief, that said complainant is a body politic and corporate, constituted as such under the laws of the State of New-York, and having its principal offices, and residing in the City and State of New-York.

2. This defendant admits upon information and belief, that James H. Bangs, then a resident of Pontiac, Michigan, did, at or about the times mentioned in said bill of complaint make application to said complainant for insurance upon his life in the sums mentioned in the 2d and 3d paragraphs of said bill for the benefit of this defendant, which applications were in writing, but whether Exhibits "A" and "B" of said bills are true copies of such applications this defendant cannot answer.

3. This defendant admits upon information and belief, that said applications were delivered to one Daniel Hubbell, then acting as the agent of complainant, but this defendant has no knowledge as to where they were
751 received by said complainant. And this defendant says he has no knowledge of the statements contained in said applications as to the state of health of said James H. Bangs, and therefore neither admits nor denies complainants' allegations in that regard contained in the 4th paragraph of his said bill.

4. This defendant admits that said complainant promised and agreed to insure the life of said James H. Bangs, for the benefit of this defendant, in the sums stated in the 5th paragraph of said bill, in the manner therein stated, and did so insure the same, but this defendant has no knowledge as to what statements and representations were relied upon by said complainant in consenting to said insurance.

5. This defendant admits, upon information and belief, that the said policies of insurance were delivered to said James H. Bangs about the time mentioned in the 6th paragraph of complainants' bill.

6. This defendant admits, upon information and belief, that a promissory note was given as stated in the 7th paragraph of said bill.

7. This defendant admits that said James H. Bangs died on or
752 about the 5th day of December, A. D. 1875, but denies that his death was sudden or mysterious, or the result of poison, and denies each and every of the allegations in the 8th paragraph of said bill contained as to the circumstances of his death, and avers that he died from natural causes.

8. This defendant admits that a coroner's inquest was held upon the body of said James H. Bangs at or about the time stated in the 9th paragraph of said complainants' bill, but this defendant has no knowledge of the further allegations in said paragraph contained and cannot make answer thereto.

9. This defendant has no knowledge of the allegations contained in the 10th paragraph of said bill of complaint, and therefore neither admits nor denies the same, and requires strict proof thereof.

10. This defendant admits upon information and belief, that at or about the time stated in the 11th paragraph of said bill, a complaint was
753 made before a Justice of the Peace of Oakland County, but this defendant has no information as to whether the same and the proceedings had therein are or are not correctly stated in said paragraph.

11. This defendant admits upon information and belief the allegations contained in the 12th and 13th paragraphs of said bill of complaint.

12. That this defendant has no knowledge of the matters of fact contained in the 14th paragraph of said bill, and therefore makes no answer thereto.

13. This defendant denies that any acts or things have been done in the premises in pursuance of or for the purpose of defrauding or cheating said complainant, and denies each and every of the allegations contained in the 15th paragraph of said complainants' bill of complaint.

14. That this defendant has no knowledge of the allegation contained in the 16th and 17th paragraphs of said complainants' bill of complaint, and therefore denies the same.

15. He admits that he is a minor and a son of the deceased and Eliza E. Bangs, and is living with her, and is under her custody, and that John M. Smith is acting as his general guardian, and that he is such guardian.

16. This defendant has no knowledge of the allegations contained in the 19th paragraph of said bill of complaint.

17. This defendant denies that said complainant has been defrauded in the premises, or that he, this defendant, has been or is in any way
754 a party directly or indirectly to any fraud or collusion as charged in said bill. That he has no knowledge as to the allegations contained in the 20th paragraph of complainants' bill, with reference to representations claimed to have been made by said James H. Bangs; denies that said James H. Bangs intended when he procured said policies to commit suicide, and avers that each and every of the allegations of such intention contained in said paragraph are false; denies that he has succeeded in suppressing or has attempted to suppress any evidence of the death of said James H. Bangs; denies that said policies are tainted with fraud, and should be canceled, but on the contrary avers that they are just and valid and binding upon said complainant.

18. And this defendant further saith that he is an infant under the age of twenty-one years, and humbly submits his rights and interests to the protection of this honorable court.

EDSON C. BANGS.

755 *By* HENRY A. HARMON,
His Guardian ad litem.

THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF MICHIGAN.

THE NEW-YORK LIFE INSURANCE COMPANY,
vs.
EDSON C. BANGS AND ELIZA E. BANGS. } In Equity.

The replication of The New-York Life Insurance Company, complainants, to the answer of Edson C. Bangs, one of the defendants. These repliants, saving and reserving to themselves now and at all times hereafter, all

and all manner of benefit and advantage of exception which may be taken to the manifold insufficiencies of the said answer for replication thereunto, say that they will aver, maintain and prove their Bill of Complaint to be true, certain and sufficient in the law, to be answered unto; and that the said answer of Edson C. Bangs is uncertain, untrue and insufficient, to be replied unto by these repliants without this, that any other matter or thing whatever, in the said answer contained, material or effectual in the law, to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed and avoided, traversed or denied, is true; all which matters and things these repliants are and will be ready to aver, maintain and prove, as this Honorable Court shall direct, and humbly pray as in and by their said bill they have already prayed.

756 HERBERT L. BAKER,
Solicitor for Complainants.

At a session of the Circuit Court of the United States for the Eastern District of Michigan continued and held pursuant to adjournment at the District Court room, in the City of Detroit, on Tuesday, the 27th day of June, in the year 1876.

Present—HON. HALMER H. EMMONS,
Circuit Judge.

THE NEW-YORK LIFE INSURANCE COMPANY,
vs.
EDSON C. BANGS AND ELIZA E. BANGS. } In Equity.

On motion of Herbert L. Baker, solicitor for the complainants, it is ordered that this cause be referred to a master and examiner of this court, to take proof of the facts and circumstances alleged in the complainants' bill of complaint herein, and to report such proofs to the court with all convenient speed.

At a session of the Circuit Court of the United States for the Eastern District of Michigan, continued and held pursuant to adjournment, at the District Court room, in the City of Detroit, on Friday, the 30th day of June, in the year 1876.

Present—HON. HALMER H. EMMONS,
Circuit Judge.

THE NEW-YORK LIFE INSURANCE COMPANY,
vs.
EDSON C. BANGS AND ELIZA E. BANGS. } In Equity.

This cause, having been referred to a master to take the proofs therein, and it appearing to the Court, on reading the Bill of Complaint herein and the answer thereto of the defendant, Edson C. Bangs, that all evidence
757 which would tend to show the cause of the death of James H. Bangs, deceased, mentioned in said Bill, is material to the issue in this cause, and should be adduced, and that the Court should be informed whether any, and if any, what indications of the cause of said death exist in or upon the

remains of said Bangs, deceased; and, it appearing that no *post-mortem* examination of said remains has ever been made, for the purpose of ascertaining the cause of said death; and it appearing also, that the said remains were interred in the City of Pontiac, in said District, and that the defendant, Eliza E. Bangs, claims to own and control said remains and the grounds wherein the same are interred, and that she refuses to permit the disinterment of said remains, and the holding of a *post-mortem* examination thereupon.

On motion of Herbert L. Baker, solicitor for the complainants, it is now therefore ordered that Darius J. Davison, Esquire, a master and examiner of this Court, be and hereby is authorized and directed to cause to be made by a competent medical expert a *post-mortem* examination of said remains,
758 and such chemical analysis thereupon as in his judgment will materially aid in ascertaining the cause of said death; and that the said master make report to the Court of his doings hereunder with all convenient speed. That for the purpose of effecting such examination, said master be and he is hereby authorized to enter upon the grounds where said remains are buried, and to cause the said remains to be disinterred, and to do such further acts as shall be necessary to the due execution of this order.

It is further ordered that the complainants in this cause do pay the costs and expenses necessarily incurred in the execution of this order.

And that a copy of this order be served upon the widow of the deceased and upon the general guardian of the minor, at least ten days before any proceedings are taken hereunder, to the end that, they or either of them may move for such modification thereof as they may be advised.

CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF MICHIGAN.

THE NEW-YORK LIFE INSURANCE COMPANY,
vs.
EDSON C. BANGS AND ELIZA E. BANGS. } In Equity.

UNITED STATES OF AMERICA,
759 *Eastern District of Michigan, ss:*

Herbert L. Baker, being duly sworn, says: That he is the solicitor for the complainants in the above named cause; that the case made by the bill of complaint herein involves the making of an examination and chemical analysis of the remains of a deceased person, and the taking of medical expert testimony relating thereto; that it also requires the examination of a considerable number of witnesses, some of whom reside in places remote from each other and from Detroit; that one of the most important witnesses for the complainants has, since or about the time of the filing of said bill, removed from his then place of residence and gone to parts unknown; that for these reasons the complainants have been unable to complete the putting in of their testimony in said cause within the time limited by the rules of the court.

HERBERT L. BAKER.

Subscribed and sworn to before me, this 27th day of September, A. D. 1876.

ALBERT L. WILKINSON,
Notary Public,
Wayne County, Michigan.

At a session of the Circuit Court of the United States for the Eastern District of Michigan, continued and held pursuant to adjournment at the District Court room, in the city of Detroit, on Thursday, the 28th day of September, in the year 1876.

Present—HON. HENRY B. BROWN,
District Judge.

THE NEW-YORK LIFE INSURANCE COMPANY,
vs.
EDSON C. BANGS AND ELIZA E. BANGS. } In Equity.

On reading and filing affidavit, and on motion of Herbert L. Baker, solicitor for the complainants, it is ordered that the time allowed for the
760 taking of testimony in the cause be and the same is hereby extended three months from the date hereof.

CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF MICHIGAN.

THE NEW-YORK LIFE INSURANCE COMPANY,
vs.
EDSON C. BANGS AND ELIZA E. BANGS. } In Equity.

UNITED STATES OF AMERICA,
Eastern District of Michigan, ss:

Herbert L. Baker, being duly sworn, says: That he is the solicitor for the complainants in the above entitled cause; that the said cause is at issue upon the bill of complaint, the answer of the defendant, Edson C. Bangs, by his guardian *ad litem*, and the replication of the complainants thereto; that deponent has been unable to complete the taking of testimony in said cause on behalf of complainants, by reason of the inability of the complainants thus far to find one Joseph Williamson, an important witness in said cause; that the bill in this cause is brought for the purpose of setting aside certain policies of life insurance upon the ground that the same were fraudulently obtained, and that the assured died from suicide committed in pursuance of such fraud; that the said Williamson is the only person who was with
761 the assured during his illness, and is the only person able to testify concerning the appearance and symptoms of the assured during his illness; that the said Williamson has heretofore resided at Pontiac, in this district; that he so resided there in the winter last past, and that his last place of residence known to this deponent was there; that deponent has caused diligent inquiries to be made at Pontiac concerning the whereabouts of said Williamson, and in answer to such inquiries was informed that he had removed to Sandusky, in the State of Ohio; that deponent has since caused diligent inquiry to be made at Sandusky aforesaid after said Williamson, but has thus far been unable to find him.

Deponent has reason to believe and does believe that said Williamson has been induced to go away and secrete himself in the interest of the defendants for the purpose of preventing the complainants from securing his testimony in the cause. That deponent has examined and taken the testimony of a number of witnesses in this cause; that he desires and expects to take the testimony of two or more medical experts herein, but that before doing
762 so the testimony of said Williamson should be procured.

Deponent further says that he has given notice for the taking of

testimony herein *de bene esse* in another state; that such taking of testimony was noticed for a day in the middle part of December inst., but that the same was unavoidably delayed; that deponent expects to have such examination *de bene esse* held in the middle part of January next ensuing hereafter.

HERBERT L. BAKER.

Subscribed and sworn to before me, this 29th day of December, A. D. 1876.

CHARLES M. WILKINSON,
Notary Public,
Wayne County, Michigan.

To Henry A. Harmon, Esq., Guardian ad litem:

SIR: On filing the within affidavit I shall move for an order in said cause extending the time for taking the testimony therein three months.

Yours, &c.,
H. L. BAKER,
Complainants' Solicitor.

Service accepted. I do not care to be present when motion is heard.

HENRY A. HARMON,
Guardian ad litem.

December 30th, 1876.

At a session of the Circuit Court of the United States for the Eastern District of Michigan, held pursuant to adjournment at the District Court room in the city of Detroit on Wednesday, the 2d day of May, in the year 1877.

Present—HON. H. B. BROWN,
District Judge.

THE NEW-YORK LIFE INSURANCE COMPANY,
vs.
EDSON C. BANGS AND ELIZA E. BANGS. } In Equity.

763 On reading and filing the affidavit of Herbert L. Baker, and on motion of Herbert L. Baker, solicitor for the complainants, it is ordered that the time for taking the testimony in the above entitled cause be and the same is hereby extended for three months from the 27th day of December, A. D. 1875.

CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF MICHIGAN.

THE NEW-YORK LIFE INSURANCE COMPANY,
vs.
EDSON C. BANGS AND ELIZA E. BANGS. } In Equity.

UNITED STATES OF AMERICA,
Eastern District of Michigan, ss:

Herbert L. Baker, being duly sworn, says: That he is the solicitor for the complainants in the above entitled cause; that certain of the complainants'

witnesses in said cause reside in New-York City; that until within a short time previously hereto the taking of the testimony in said cause has been unavoidably delayed by reason of the complainants' inability to find one Joseph Williamson, the principal witness in said cause; that deponent has recently found said Williamson, and has taken his testimony in said cause; that on the 12th day of March instant deponent gave notice of the
764 taking of testimony on behalf of the complainants *de bene esse* in said cause, such testimony to be taken on the 20th day of March aforesaid. That on the 23d day of March aforesaid deponent was advised, by letter from Messrs. Fullerton, Knox & Crosby, counselors at law in New-York aforesaid, that the complainants had there recently discovered facts which rendered it necessary to make some investigation before putting in the testimony under said notice, in consequence of which the complainants had not put in their testimony then on the said 20th day of March; that they would make said investigation as speedily as possible and advise deponent when ready to take the said testimony, deponent further says that subsequently, and upon being advised by said Fullerton, Knox & Crosby that they had made said investigations and were ready to take said testimony, deponent on the 23d day of April, A. D. 1877, gave notice that complainants would take said testimony *de bene esse* on the 28th day of April aforesaid, each of said notices being given to Henry A. Harmon, Esq., the guardian *ad litem* of the defendant, Edson C. Bangs.

765 That in pursuance of the notice last mentioned, the deposition of William M. Adams of New-York City was taken in said New-York City on behalf of the complainants; and the same was duly returned to the Clerk of this court on the 7th day of May, A. D. 1877.

HERBERT L. BAKER.

Subscribed and sworn to before me this 18th day of May, A. D. 1877.

JNO. GRAVES,
U. S. Circuit Court Commissioner,
Eastern District Michigan.

CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF MICHIGAN.

THE NEW-YORK LIFE INSURANCE COMPANY,
vs.
EDSON C. BANGS AND ELIZA E. BANGS. } In Equity.

UNITED STATES OF AMERICA,
Eastern District of Michigan, ss:

Herbert L. Baker, being duly sworn, says: That he is the solicitor for the complainants in the above entitled cause; that the said cause was not in readiness for hearing in time to notice the same for hearing, and have it placed upon the calendar for the present term of said court; that a suit at law involving the same subject matter as this suit is now pending in the State and District of Minnesota, and that the complainants are justly fearful that

they shall lose important rights and be seriously prejudiced by the delay in this cause, unless the same is brought to a hearing and decree at the present term of this court. Deponent further says, that there is no
766 appearance by the defendants or either of them in this cause except that entered for the infant defendant, Edson C. Bangs by Henry A. Harmon, the formal guardian *ad litem*, appointed by the court in this cause.

HERBERT L. BAKER.

Subscribed and sworn to before me, this 18th day of May, A. D. 1877.

JNO. GRAVES,
U. S. Circuit Court Commissioner,
Eastern District of Michigan.

To Henry A. Harmon, Esq., Guardian ad litem of defendant, Edson C. Bangs:

Please to take notice, that on filing the foregoing affidavit, I shall move the court for an order placing the above entitled cause on the calendar for hearing at the present term of said court.

Dated 18th May, 1877.

Yours, &c.,
HERBERT L. BAKER,
Complainants' Solicitor.

I know of no objection to the cause being placed on the docket for the present term, and therefore consent to an order to that effect.

May 18th, 1877.

HENRY A. HARMON,
Guardian ad litem.

At a session of the Circuit Court of the United States for the Eastern District of Michigan, continued and held pursuant to adjournment, at the District Court room, in the city of Detroit, on Friday the 18th day of May, in the year 1877.

Present—HON. HENRY B. BROWN,
District Judge.

THE NEW-YORK LIFE INSURANCE COMPANY, *vs.* EDSON C. BANGS AND ELIZA E. BANGS. } In Equity.

On reading and filing the affidavits of Herbert L. Baker, solicitor for said complainants, and on motion of said solicitor, it is ordered that the time
767 heretofore limited for taking the testimony in said cause be extended to the eighth day of May, A. D. 1877, so as to admit to be read in evidence the deposition of William M. Adams, taken *de bene esse* in the city of New-York. Ordered also that said cause be placed on the docket for hearing at the present term of said court.

H. B. BROWN,
District Judge.

At a session of the Circuit Court of the United States for the Eastern District of Michigan, continued and held pursuant to adjournment at the District Court room in the City of Detroit, on Saturday, the ninth day of June, in the year one thousand eight hundred and seventy-seven.

Present—HON. HENRY B. BROWN,
District Judge.

THE NEW-YORK LIFE INSURANCE COMPANY, *Complainants,*
vs.
EDSON C. BANGS AND ELIZA E. BANGS. } In Equity.

This cause having this day been brought on to be heard upon the pleadings and the proofs taken therein as to the defendant, Edson C. Bangs, and on the bill taken as confessed as to the defendant, Eliza E. Bangs, and the Court having duly considered the said pleadings and proofs, and it
768 appearing to this Court that the two policies of life insurance mentioned in the complainants' bill of complaint were obtained by the assured James H. Bangs with the intent on his part and that of the defendant that he, said assured, should commit suicide, and it appearing also that the said James H. Bangs did, shortly after obtaining said policies of insurance, commit suicide, and that the complainants have been thereby defrauded; it is thereupon ordered, adjudged, and decreed, and this Court, in virtue of the power therein vested, doth order, adjudge, and decree that the said two policies of insurance mentioned and described in the complainants' bill of complaint, issued by the complainants on the 22d day of November, A. D. 1875, and numbered respectively 116,731 and 116,732, in each of which the complainants undertook to insure the life of said James H. Bangs for the benefit of the defendamt, Edson C. Bangs, in the sum of five thousand dollars, be and the same are hereby declared to be null and void;
769 and that the defendant, Edson C. Bangs, be directed to deliver up the said policies of insurance to be canceled.

It is further ordered and decreed that the injunction heretofore issued in this cause be made perpetual; that the defendants, their counselors, attorneys, solicitors and agents be perpetually enjoined from instituting or carrying on any action at law against the said complainants upon the said policies of insurance or either of them, or otherwise seeking to compel the complainants to pay any sum or sums of money by reason of the said policies of insurance.

It is further ordered and decreed that the complainants do surrender up to the defendants the promissory note mentioned in said bill of complaint, and given by said James H. Bangs in lieu of payment of the first premium upon said policies of insurance.

And it is further ordered and decreed that the said defendants do pay to the complainants the costs of this suit to be taxed, and that the com-
770 plainants have execution therefor according to the course and practice of the Court.

The above decree is entered as of Saturday, the 19th day of May, 1877.

THE CIRCUIT COURT OF THE UNITED STATES OF AMERICA,
For the Eastern District of Michigan.—In Equity.

THE NEW-YORK LIFE INSURANCE COMPANY, *Complainants,*
vs.
EDSON C. BANGS AND ELIZA E. BANGS, *Defendants.*

Cause No. 2015.
Bill of Costs.

Solicitors' fees by rule		$20.00
Marshal's fees		8.56
Clerk's fees		23.00
Circuit Court Commissioner's fees, under order to disinter remains	$25.00	
D. J. Davison (taking testimony)	6.70	
Charles Flowers, " "	18.00	
Charles Swift, " "	25.00	
T. S. Buckham, " "	25.00	
	$97.70	97.70
V. L. Lillie, depositions, *de bene esse*, in New-York		5.00

Register of Deeds (not included in above)

Witnesses fees:

	Miles travel.	Days.		
F. S. Stewart	50	1	$4.10	
Chancey Earl	50	1	4.10	
George P. Hungerford	50	1	4.10	
Joseph Williamson	120	1	9.50	
Daniel Hubbell	50	1	4.10	
Dr. S. H. Douglas	80	1	5.50	
Dr. A. B. Lyon	1	1	1.60	
Dr. D. O. Farrand	1	1	1.60	
Dr. F. B. Galbraith	50	1	4.10	
Perrin V. Fox	314	1	17.20	
			$55.90	55.90
		Total,		$210.16

I hereby tax the foregoing Bill of Costs of complainant at the sum of two hundred and ten $\frac{16}{100}$ dollars.

ADDISON MANDELL,
Register in Chancery.

——— *County, ss:*

I hereby tax the costs of the Register in Chancery in the foregoing entitled cause at the sum of ——— dollars.

Circuit Court Commissioner for said County.

STATE OF MICHIGAN,
Wayne County, ss:

Herbert L. Baker, being duly sworn, doth depose and say: That he is the solicitor for complainants in the within entitled cause, and that the several

items of disbursements and fees of officers of the court charged in the foregoing bill of costs have been actually and necessarily incurred, or paid, according to his best information and belief.

HERBERT L. BAKER.

Subscribed and sworn to before me, this 13th day of June, A. D. 1877.

DWIGHT C. REXFORD,
Notary Public,
Wayne County, Michigan.

To Henry A. Harmon, Esq., Guardian ad litem of defendant, Edson C. Bangs:

Please to take notice, that on the fourteenth day of June, instant, at nine o'clock in the forenoon of that day, I shall apply to the within named
771 court for taxation of the complainant's costs in the within entitled cause, as the said costs are set forth in the foregoing bill of costs.

Dated June 9th, A. D. 1877.

Yours, &c.,
[Signed] H. L. BAKER,
Complainants' Solicitor.

I accept service of a copy of above notice and within bill.
June 9th, 1877.

[Signed] HENRY A. HARMON,
Guardian ad litem.

CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF MICHIGAN.

THE NEW-YORK LIFE INSURANCE COMPANY,
vs.
EDSON C. BANGS AND ELIZA E. BANGS. } In Equity.

To the Clerk of said Court:

Please let the decree in the above entitled cause be enrolled.
Dated 14th June, 1877.

Yours, &c.,
H. L. BAKER,
Complainants' Solicitor.

THE UNITED STATES OF AMERICA,
Eastern District of Michigan, ss:

I, Addison Mandell, Clerk of the Circuit Court of the United States for the Eastern District of Michigan, do hereby certify that the above and foregoing is a true copy of the records and files (excepting the depositions of witnesses) constituting the enrollment in the above entitled cause as appears of record and on file in my office; that I have compared the same with the original

entry of said records and files, and it is a true transcript therefrom, and of the whole thereof (except as aforesaid).

Witness my official signature and the seal of said court, at Detroit, in said District, this 15th day of June, in the year of our Lord, one thousand
772 eight hundred and seventy-seven, and of the Independence of the United States of America the one hundred and first.

ADDISON MANDELL,
Clerk,
By JNO. GRAVES,
Deputy Clerk.

SEAL OF THE U. S. CIRCUIT COURT EASTERN DISTRICT OF MICHIGAN.

CIRCUIT COURT OF THE UNITED STATES OF AMERICA,
For the Eastern District of Michigan, ss:

THE NEW-YORK LIFE INSURANCE COMPANY,
vs.
EDSON C. BANGS AND ELIZA E. BANGS. } No. 2015.

I, Henry B. Brown, District Judge of the Eastern District of Michigan, do hereby certify that Addison Mandell is Clerk of the Circuit Court of the United States for the Eastern District, and that John Graves is the Deputy Clerk thereof, and that the seal annexed to the above certificate signed by him is the seal of said court, and that the above attestation is in due form.

In testimony whereof I have hereunto signed my name officially this 15th day of June, A. D. 1877.

HENRY B. BROWN,
District Judge.

UNITED STATES CIRCUIT COURT, DISTRICT OF MINNESOTA.

EDSON C. BANGS by CUSHMAN K. DAVIS, his Guardian, *ad litem*,
vs.
THE NEW-YORK LIFE INSURANCE COMPANY.

And now comes the plaintiff and demurs to the supplemental answer herein, and alleges as grounds of demurrer that it appears upon the face of said answer:

First.

That it contains no statement of facts sufficient to constitute a defense.

Second.

That the proceedings of the United States Circuit Court for the Eastern District of Michigan, set out in the said supplemental answer, are void
773 as appears by the record thereof which has been filed as a part of said answer, in that it appears that the said court had no jurisdiction of the person of this plaintiff, and no jurisdiction in equity over such action under any circumstances apparent in said record.

DAVIS, O'BRIEN & WILSON,
Attorneys for Plaintiff.

UNITED STATES CIRCUIT COURT FOR THE DISTRICT OF MINNESOTA. TERM MINUTES, JUNE TERM, A. D. 1877.

June 23, 1877.

Present—HON. SAMUEL F. MILLER,
HON. RENSSELAER R. NELSON,
Judges.

EDSON C. BANGS,
vs.
THE NEW-YORK LIFE INSURANCE COMPANY.

The demurrer of the plaintiff to the defendants' supplemental answer on file herein, having been heretofore argued and submitted to the court and taken under advisement.

Now the court being fully advised in the premises, it is ordered that the said demurrer be, and it hereby is sustained.

CIRCUIT COURT OF THE UNITED STATES OF AMERICA FOR THE DISTRICT OF MINNESOTA.

EDSON C. BANGS, by his Guardian *ad litem*, CUSHMAN K. DAVIS,
vs.
THE NEW-YORK LIFE INSURANCE COMPANY.

Judgment, Principal, and Interest		$10,919 $\frac{60}{100}$
Damages		
Clerk's Fees: (To be taxed.)		
Writ, Issuing and Sealing		
Filing Papers, 33 Oaths	$3.30	
Commissions, Subpœnas	1.00	
Entries and Record, 45 Folios	6.75	
Certified Copies, Folios		
Complete Record, 86 Folios	12.90	
Dockets, Indexes and Services	3.00	
Receiving, Keeping and Paying		
Affidavits, Certificate and Seal		
Calling and Swearing Jury, 75 cents; Officer, 20 cents.		
Report on Assessment of Damages, 75 cents		
Execution	1.20	$28.45
Marshal's Fees: (To be taxed.)		
On Writ; Subpœnas; Writ of Enquiry		
Witness Fees:		
Name, Warren Draper, 3 days, 120 miles	$16.50	$16.50
" Eliza E. Bangs, 3 days, 53 miles	9.80	9.80
Attorney's Fees:		
Docket Fee, $20.00; Four Depositions, $10.00		30.00

Master's and Examiners' Fees:

Computing and Reporting Amount due.....
Taking Depositions, $48.54.....
Paid for Copy of Record from U. S. Circuit Court Eastern District of Michigan.....

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Costs taxed at $84.75..... $84.75

St. Paul, January 26, 1878.

H. E. MANN,
Clerk.

STATE AND DISTRICT OF MINNESOTA,
County of Ramsey, ss:

C. K. Davis, being duly sworn, doth depose and say: That he is one of the attorneys for the plaintiff in the foregoing entitled action; that the foregoing bill of plaintiff's costs and disbursements *are* just and correct, and have been necessarily paid or incurred therein; that the witnesses therein claimed for were necessary and material witnesses upon the part of said plaintiff, and actually attended at Court during the times charged in the foregoing bill of costs and disbursements.

C. K. DAVIS.

Subscribed and sworn to before me, this — day of January, 1878.

[SEAL.] C. T. WARD,
Notary Public,
Ramsey County, Minnesota.

You will please take notice that on Saturday, January 26th, A. D. 1878, at 10 o'clock in the forenoon of that day, plaintiff will apply to H. E. Mann, Esq., Clerk of said Court, at his office in the City of Saint Paul, Minnesota, for the taxation and allowance of the foregoing bill of costs and disbursements.

DAVIS, O'BRIEN & WILSON,
Attorneys for Plaintiff.

To
Messrs. BIGELOW, FLANDRAU & CLARK,
Attorneys for Defendant.

U. S. CIRCUIT COURT, MINNESOTA.

EDSON C. BANGS, *et al.*,
vs.
THE NEW-YORK LIFE INSURANCE COMPANY.

The plaintiff objects to the withdrawal of the answer or any part of the same on the ground that it is too late to do so, the same having been
775 held a bar to the suit in equity brought by the defendant against the plaintiff, in which this Court has this day denied a preliminary injunction for that and other reasons.

Dec. 13, 1877.

C. K. DAVIS,
Plaintiff's Attorney.

Plaintiff excepts.

UNITED STATES CIRCUIT COURT FOR THE DISTRICT OF MINNESOTA. TERM MINUTES, DECEMBER TERM, A. D. 1877.

December 13, 1877.

Present—HON. JOHN F. DILLON,
HON. RENSSELAER R. NELSON,
Judges.

EDSON C. BANGS,
vs.
THE NEW-YORK LIFE INSURANCE COMPANY.

This cause being this day called for trial, the defendant, by its attorney, asks leave of the Court to withdraw the original answer therein, so as to rest the defense of said action upon the said supplemental answer, and the matters therein pleaded, to which the plaintiff, by his attorney, files objections, whereupon it is ordered that such leave be granted, and that the said original answer be withdrawn so as to leave the defense to stand upon said supplemental answer and the matters therein pleaded, to which ruling, the plaintiff, by his attorney, excepts, and his exception is filed.

The plaintiff, by his attorneys, thereupon moves for judgment and the demurrer of the plaintiff to said supplemental answer having been
776 heretofore sustained, it is ordered that said motion be granted and that the plaintiff have judgment for the amount claimed in the complaint, amounting, with interest to this date, to ten thousand nine hundred and nineteen dollars and sixty cents ($10,919.60.)

EDSON C. BANGS,
vs.
THE NEW-YORK LIFE INSURANCE COMPANY.

Judgment in favor of the plaintiff for ten thousand nine hundred and nineteen dollars and sixty cents ($10,919.60,) having been by this Court heretofore ordered. Now, therefore, on motion of plaintiff's attorneys, and pursuant to said order, it is by the Court considered, ordered and adjudged that the plaintiff do have and recover of and from the defendant the said sum of ten thousand nine hundred and nineteen dollars and sixty cents ($10,919.60), besides his costs and charges by him in and about his suit, in this behalf expended to be taxed, and that execution issue therefor.

Judgment record signed this thirteenth day of December, A. D. 1877.

Damages,	$10,919.60	H. E. MANN,
Costs,	84.75	*Clerk.*
	$11,004.35	

UNITED STATES OF AMERICA,
District of Minnesota, ss:

I, H. E. Mann, Clerk of the Circuit Court of the United States of America for the District of Minnesota, do hereby certify that I have carefully compared the foregoing copy with the original thereof, which is in my custody as such clerk, and that such copy is a correct transcript from such original, which original is the judgment roll and record in the action therein entitled.

In testimony whereof I have hereunto set my hand and affixed the seal of said Court, at St. Paul, in said District, this 22d day of
777 [SEAL OF COURT.] May, A. D. 1878. H. E. MANN,
Clerk.

UNITED STATES CIRCUIT COURT FOR THE DISTRICT OF MINNESOTA. TERM MINUTES, DECEMBER TERM, A. D. 1877. DECEMBER 20, 1877.

Present—Hon. JOHN F. DILLON,
" RENSSELAER R. NELSON,
Judges.

EDSON C. BANGS, who sues by CUSHMAN K. DAVIS, his guardian *ad litem.*
vs.
THE NEW-YORK LIFE INSURANCE COMPANY.

And now comes the defendant by Greenleaf Clark, Esq., its attorney, on whose motion it is ordered that a writ of error in this cause to remove the same to the Supreme Court of the United States be and the same is hereby allowed.

UNITED STATES OF AMERICA, ss.:

The President of the United States of America, to the Judges of the Circuit Court of the United States for the District of Minnesota, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Circuit Court, before you, or some of you, between Edson C. Bangs by his guardian *ad litem* Cushman K. Davis, plaintiff, against The New-York Life Insurance Company, defendant, a manifest error hath happened, to the great damage of the said defendant as is said; we being willing that such error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Justices of the Supreme Court of the United States, at the Capitol in the City of Washington, together with this writ, so that you have the same at the said place before the Justices aforesaid on the second Monday of October next, that, the record and proceedings aforesaid being inspected, the said Justices of the Supreme Court may cause further to be done therein, to correct that error, what of right and according to the law and custom of the United States ought to be done.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this twentieth day of December, in the year of our Lord one thousand eight hundred and seventy-seven, and of the independence of the United States the one hundred and second.

[SEAL.]

Allowed.

H. E. MANN.

Clerk of the Circuit Court of the United States of America, for the District of Minnesota.

UNITED STATES OF AMERICA,
DISTRICT OF MINNESOTA, ss.:

The answer of the Judges of the Circuit Court of the United States for the District of Minnesota, in the Eighth Circuit, in within writ mentioned.

The record and proceedings whereof mention is within made, with all things concerning the same, are hereby respectfully certified to the Justices of the Supreme Court of the United States of America, within mentioned, in a certain schedule to this writ annexed, as within it is commanded.

Witness the Hon. Morrison R Waite, Chief Justice of the Supreme Court of the United States of America, at Saint Paul, in the District of Minnesota, this 11th day of September, in the year of our Lord one thousand eight hundred and seventy-eight, and of the independence of the United States the one hundred and third year.

[SEAL.]

H. E. MANN,

Clerk U. S. Circuit Court, Dist. of Minnesota.

(Endorsed) B. 228. Law. Supreme Court of the United States. The New-York Life Insurance Company, Pl'ff in Error *vs.* Edson C. Bangs, by his guardian *ad litem* Cushman K. Davis. Writ of Error.

UNITED STATES OF AMERICA, ss.

To Edson C. Bangs, suing by his guardian *ad litem* Cushman K. Davis, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the second Monday of October next, pursuant to a writ of error, filed in the Clerk's Office of the Circuit Court of the United States for the Eighth Circuit and District of Minnesota, wherein the New-York Life Insurance Company is plaintiff and you are defendant in error, to show cause, if any there be, why the judgment in said writ of error mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Morrison R. Waite, Chief Justice of the said Supreme Court of the United States, this twentieth day of December, in the year of our Lord eighteen hundred and seventy-seven.

JOHN F. DILLON,

Circuit Judge.

DISTRICT OF MINNESOTA, ss.:

Greenleaf Clark of said District, being duly sworn, deposes and says, that at Saint Paul, in said District, on the 20th day of December, A. D. 1877, he served the within Citation on the within named defendant in error, by then and there exhibiting the same to the within named Cushman K. Davis, the guardian *ad litem* for the within named Edson C. Bangs and a member of the

law firm of Davis, O'Brien & Wilson, the attorneys of record of said defendant in error, and by then and there giving to in hand and leaving with said Davis a true copy of said Citation.

GREENLEAF CLARK.

Subscribed and sworn to before me, this 20th day of December, 1877.

H. E. MANN,
Clerk.

(Endorsed) B. 228. Law. Supreme Court of the United States. The New-York Life Insurance Company, Pl'ff in Error, *vs.* Edson C. Bangs, by his guardian *ad litem* Cushman K. Davis, Def't in Error.

CITATION.—Due service admitted December 20, 1877. Davis, O'Brien & Wilson, Att'ys for Def'ts in Error. Filed December 20, 1877.

H. E. MANN,
Clerk.